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No. _____

In the

Supreme Court of the United States

TRIPLE-S MANAGEMENT, CORP.;
TRIPLE-S SALUD, INC.,

Petitioners,

v.

MUNICIPAL REVENUE
COLLECTION CENTER (CRIM),

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth Of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

PAUL D. CLEMENT
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

PEDRO E. ORTIZ ALVAREZ
P.O. Box 9009
Ponce, PR 00732

RICHARD H. PILDES
Counsel of Record
Vanderbilt Hall Room 507
40 Washington Sq. So.
New York City, NY 10012
(212) 998-6377

Counsel for Petitioners

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QUESTION PRESENTED

For nearly 30 years, the executive branch invited specific reliance on its interpretation of law by issuing numerous authoritative, formal, and expressly binding rulings that a private entity was legally entitled to tax-exempt status as long as it complied with a long list of conditions. The executive branch then reversed its legal position. Rather than make that change prospective only, however, it reached back to impose 15 years of retroactive financial liability as well.

The question presented is:

Is the executive branch, unlike the legislative branch, free of all due process constraints on retroactive government action, no matter how far back in time that retroactivity runs, how harsh and oppressive the retroactivity might be, how justified a private entity's reliance might be, or whether the government has any rational basis for making its change retroactive, as long as the executive branch asserts that its earlier interpretation of law was "wrong?"

RULE 14.1(b) STATEMENT

The following are the parties to the proceeding in the Supreme Court of the Commonwealth of Puerto Rico:

1. Triple-S Management, Corp.
2. Triple-S, Inc. (now, Triple-S Salud, Inc.)
3. Centro De Recaudaciones De Ingresos Municipales [Municipal Revenue Collection Center]

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Triple-S Management, Corp. and Triple-S Salud, Inc., respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico.

OPINIONS BELOW

The orders and judgment of the Supreme Court of Puerto Rico are at App. 89–100. The opinion of the Court of Appeals is reprinted at App. 1, and the opinions of the Court of First Instance are reprinted at App. 43–88.

JURISDICTION

The Supreme Court of Puerto Rico issued its order denying certiorari on March 13, 2009. App. 89. Petitioners' timely final petition for rehearing was denied by order officially notified and recorded on May 27, 2009. App. 97. This Court has jurisdiction under 28 U.S.C. § 1258.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional provisions and statutes are set forth at App. 101–130.

STATEMENT OF THE CASE

A. Factual Background

The undisputed facts in this case are simple and straightforward. They present one of the most extreme examples of government-imposed retroactive financial liability ever presented to this

Court. For nearly 30 years, through at least six different formal, final, and binding administrative rulings, state administrative entities that had been delegated enforcement power over the local tax codes concluded that petitioners were entitled to tax-exempt status as a matter of law. Moreover, the agencies' formal published guidelines expressly promised that rulings of this sort were binding and would be revoked or modified, if at all, only prospectively. App. 131–173, 180–216. Then, in 2003 and 2006, these agencies decided to make a 180-degree about-face in their interpretation of the law. App. 174–179. They notified petitioners that, based on a changed interpretation of law, they were revoking their earlier rulings. Rather than make this new interpretation prospective—to which petitioners would have no constitutional objection—one agency demanded retroactive payment of taxes reaching back 15 years.

The courts below rejected petitioners' due process challenge on the theory that agencies are entitled to change their interpretations of law and to apply them retroactively simply by declaring an earlier interpretation "wrong." Moreover, the lower courts held that agencies may do so without giving any justification at all for the length of the retroactivity period or taking into account the nature of the justifiable reliance interest private parties possess based on prior, consistent, formal, final, and expressly binding agency interpretations. Thus, under the rulings below, the executive branch can always change its interpretation of law and make those changes as retroactive as it likes—regardless of how harsh and oppressive that

retroactivity might be, and how justified private reliance on nearly 30 years of authoritative, consistent, regularly reaffirmed interpretations to the contrary might be—because due process has no application when agencies change their legal interpretations retroactively. All an agency need do, and all the agency did here, is announce that its prior interpretation of the law was "wrong."

Petitioner Triple-S, Salud Inc. ("Triple-S")[1] is a health insurance provider in Puerto Rico and successor to an entity founded in 1959 to provide pre-paid, low-cost medical and hospital insurance to Puerto Rico's middle and working classes. Triple-S Management, Corp. is the parent company of Triple-S. For nearly 30 years, from July 16, 1976 until July 31, 2003, the Department of the Treasury in Puerto Rico ("Treasury") issued numerous formal rulings that recognized Triple-S's entitlement to income and property tax exemption. Treasury repeatedly concluded that Triple-S qualified for tax-exempt treatment by operating as a non-profit entity. *See* Puerto Rico Property Tax Act, P.R. Laws Ann. tit. 13, § 551(t) (repealed 1991), App. 115; Puerto Rico Income Tax Act of 1954, P.R. Laws Ann. tit. 13, § 3101(8) (repealed 1994), App. 124; *see also* 21 L.P.R.A. § 5151(g), 13 L.P.R.A. § 8506(6) (current versions of statutes).

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[1] Triple-S, Inc., a petitioner in the Puerto Rico Supreme Court, changed its corporate name to Triple-S Salud, Inc. in February 2009. For simplicity, the petitioners will be referred to as "Triple-S."

Puerto Rico's income tax laws grant an exemption to "organizations that are not organized for purposes of profit but rather that function exclusively for the promotion of social welfare" and "the net earnings of which are dedicated exclusively to charitable, educational, or recreational purposes." P.R. Laws Ann. tit. 13, § 3101(8), App. 124. Like similar federal and state tax exemptions, the purpose of this exemption is to encourage such organizations to devote their resources to the public welfare rather than private profit. Although Triple-S was formally incorporated as a for-profit entity in 1959, there is no dispute that it did so only because incorporating as a non-profit entity was not feasible for an insurance provider under Puerto Rico law at the time. App. 131, 132, 145–151. As Treasury concluded, from its inception Triple-S operated in fact as a non-profit entity. The subscribers of Triple-S, doctors and dentists only, relinquished any right to dividends. Treasury noted that Triple-S regularly filed numerous sworn assurances with Treasury that Triple-S operated as a non-profit organization that did not pay dividends or bestow assets on shareholders, and that it was in fact dedicated to promoting social well-being by offering affordable health insurance to a segment of the Puerto Rican population that, up to that point, had no options for health insurance. App. 132–133, 138–140, 145–147.

Because Triple-S was operating as a non-profit entity for all relevant purposes, Treasury concluded that Triple-S was entitled to tax-exempt status for income-tax purposes, but only as long as it complied with approximately five pages of rigorous

terms and conditions Treasury laid out. App. 133–135, 138–140. Treasury first reached this conclusion in two rulings in the 1970s, App. 131–141, then reaffirmed it in subsequent decisions over the next two decades. App. 141–160. Each of these Treasury rulings required Triple-S to comply with numerous conditions, including ones that limited the compensation of Triple-S's officers and directors, required Treasury-specified levels of reserve requirements, required Triple-S to invest its surplus in a defined manner (to lower premium costs), and required annual filings that included sworn assurances regarding Triple-S's operations. In direct, specific reliance on these binding rulings—including that any change in Triple-S's tax status would be prospective only—Triple-S complied with all the conditions designed to ensure its substantive non-profit status.

Treasury revisited the status of Triple-S for a fourth time in 1987 when it considered Triple-S's request for tax exemption on all of its real and personal property. Once again, Treasury concluded that Triple-S was legally entitled to tax-exempt status, this time under the property tax law, P.R. Laws Ann. tit. 13, § 551(t) (repealed 1991). Again, Treasury issued a letter ruling to this effect. App. 142.

In 1991, the Puerto Rico Legislature created the Municipal Revenue Collection Center (known as CRIM, for its Spanish acronym), a new entity to take over Treasury's powers to collect real and personal property taxes. The new law transferred to CRIM all "the obligations" of Treasury regarding personal and real-property taxes, as well as

Treasury's "powers and functions." Act of Aug. 30, 1991, No. 80, § 23(f), App. 119. In 1998, CRIM found that Triple-S continued to be legally entitled to the property tax-exemption that Treasury had recognized previously. In addition, CRIM ruled that "the rights acquired by Triple-S [under the Treasury rulings] will continue in effect" under the laws CRIM enforced. App. 163. That same year, Treasury also reaffirmed the income tax exemption for Triple-S. Together, then, Treasury and CRIM considered Triple-S's tax status on six separate occasions and reached the same conclusion each time: Triple-S was legally entitled to tax-exempt status for income and property taxes.

Treasury's determinations were formal and binding. Treasury made its rulings in formal Administrative Determination Letters ("Letter Rulings"). These letters, modeled after Internal Revenue Service ("IRS") letter rulings, are "official interpretations by the Department as to the application of the Code, or any other tax law, to the acts or transactions represented by the taxpayer." App. 180. These Letter Rulings are "binding on the Department as long as the representations upon which the ruling was based reflect an accurate statement of the material facts with respect thereto, and the transaction was carried out as proposed, and there has been no change in the law and regulations that apply" to the relevant period. App. 186. Triple-S provided full and accurate information at all times and met all the terms and conditions set by Treasury. There has never been any allegation to the contrary. Thus, Triple-S

complied with all of Treasury's requirements for tax-exempt status under its Letter Rulings.

Although Puerto Rico did not change its tax laws in any relevant respect, in July 2003, Treasury changed its view of the proper income tax treatment of Triple-S. Specifically, in what Treasury itself called a "new public policy," Treasury came to the view that entities had to be formally incorporated and organized as non-profit entities to receive the tax exemption, regardless of whether they functioned in fact as non-profits. App. 175. Treasury, for its part, did not seek to change Triple-S's income tax-exempt status retroactively. Rather, Treasury followed its internal rules against taxing entities retroactively as long as there were no omissions or misstatements of facts, no changes in the applicable law or regulations, and the taxpayer relied in good faith on a Letter Ruling. Treasury simply determined that, going forward, Triple-S would no longer be exempt from income taxes. Triple-S has not objected to this conclusion.

CRIM also decided to change Triple-S's property tax status. But, unlike Treasury, CRIM demanded retroactive taxes from Triple-S going all the way back to the year of CRIM's inception—despite the many previous binding rulings from Treasury and CRIM over nearly 30 years that Triple-S was tax exempt, and despite CRIM's recognition in 1998 that Triple-S was entitled to rely on these prior rulings. In March 2006, CRIM issued tax notices informing Triple-S that it was revoking Triple-S's real and personal property tax exemptions and that its ruling would apply

retroactively to personal property taxes from 1991, the year when CRIM was first established, and to real property taxes from fiscal year 1992-1993 onward. The only reason CRIM did not go even further back in seeking retroactive taxes is that CRIM did not exist until 1991; otherwise, CRIM presumably would have demanded retroactive taxes going back to the beginning of Triple-S's existence. There is no other limiting principle in the agency's or the lower courts' theory of retroactivity; that theory sweeps back literally to the creation of CRIM or the taxpayer. CRIM did not base its decision to impose retroactive taxes on a conclusion that Triple-S had provided factually misleading or incomplete information. Nor did CRIM refute the fact that Triple-S acted in good-faith reliance on the binding Letter Rulings from Treasury and on CRIM's own reaffirmation of Triple-S's tax-exempt status. CRIM simply changed its mind about the meaning of the operative legal provision and sought to have that shift in position apply retroactively, despite Triple-S's good faith reliance on the government's previous formal orders.

B. Proceedings Below

Triple-S filed two separate complaints, on March 28, 2006 and May 24, 2006, in Puerto Rico state court challenging CRIM's retroactive imposition of real- and personal-property taxes on federal constitutional and other grounds, including a claim that the taxes violated the federal Due Process Clause. Triple-S did not challenge its obligations to pay taxes prospectively.

Without separately considering the Due Process Clause claim, the Court of First Instance rejected Triple-S's claims on a motion for summary judgment. App. 46. The trial court concluded that, because the agency's new interpretation was "correct," all the prior binding administrative rulings were irrelevant for constitutional purposes. The trial court gave no weight to the reliance interests Triple-S had in the six rulings by Treasury and CRIM that granted Triple-S tax-exempt status on the basis that Triple-S was operating for all relevant purposes as a non-profit. The trial judge also concluded that due process imposed no limit on the retroactive change in interpretation. Instead, the trial judge held that, despite Treasury's longstanding, consistent, prior rulings, Puerto Rico's tax laws required formal incorporation as a non-profit to receive non-profit tax status. Thus, the trial judge reasoned that those earlier rulings were "ultra vires, contrary to the law, and, therefore, null." App. 84. Despite the formality of the Letter Rulings and Triple-S's good-faith reliance on them, the trial judge ruled as if those Letter Rulings had never existed. The judge also thought that curing past legal "mistakes" was a sufficient justification to answer any due process concerns. According to that reasoning, CRIM was free to act as if it was operating on a blank slate. With the stroke of a pen, the trial judge thus erased the six formal rulings made over a span of 27 years by CRIM and its predecessor agency. Even though Triple-S designed its operations in good-faith reliance on those rulings and neither the law nor the facts had changed, the trial court decided that Triple-S had no valid constitutional claim.

In a consolidated appeal involving both the real- and personal-property tax cases, the Court of Appeals affirmed in an opinion that mirrored the reasoning of the lower court. Specifically, the Court of Appeals agreed that Triple-S could not object to the retroactive imposition of taxes because the earlier decisions by Treasury and CRIM could be treated as "null and void" from the start. App. 37–38. In the view of the Court of Appeals, the plain language of Puerto Rico's tax law required formal incorporation status as a non-profit—even when such incorporation was impossible and the entity operated for all intents and purposes as a non-profit in fact, pursuant to specific limitations and conditions the Treasury demanded. App. 35, 37. The fact that Treasury and CRIM, the agencies charged with enforcing the law, had concluded otherwise for more than 27 years, or that Triple-S had structured itself in good-faith reliance on those agency interpretations, was of no legal relevance to the Court of Appeals. The court held that the earlier actions should be regarded as "ultra vires" and hence that CRIM could change course as if these earlier rulings and the justifiable reliance they had induced had never occurred. App. 39–40. Thus, by pretending the executive branch's longstanding, formal, authoritative, and binding prior legal rulings had never happened, an agency was free, constitutionally, to give its changed legal interpretation as massive a retroactive effect as it cared to impose.

The Supreme Court of Puerto Rico denied certiorari. App. 89–92. Petitioners raised their federal constitutional claim at every opportunity: in

their complaints, their summary judgment papers before the trial court, their briefs on appeal, and their petition for certiorari to the Puerto Rico Supreme Court. The courts below uniformly rejected petitioners' due process arguments and concluded that nothing in the Due Process Clause limits the authority of the executive branch to impose massive retroactivity as long as the earlier agency position that induced reliance is deemed "wrong."

REASONS FOR GRANTING THE PETITION

The courts below decided an important question of federal constitutional law in a way that is at odds with bedrock constitutional principles and many decisions of this Court on retroactive government action. The Court has recognized, under numerous constitutional provisions, that retroactive legislation raises acute concerns about violating what this Court has characterized as "fundamental notions of justice" recognized since the Framing. The decision below conflicts with those cases, and raises broad issues of general importance, by holding that these principles are inapplicable when it comes to retroactive administrative changes in policy and law. This Court's intervention is needed to address whether, and to what extent, the same constitutionally based "fundamental notions of justice" reflected in this Court's retroactivity decisions limit the power of agencies to destroy reasonable, investment-backed private reliance interests when agencies change their interpretations of law and apply those interpretations retroactively.

The courts below thought the Constitution gave *carte blanche* for administrative retroactivity, no matter the scope or justification, as long as the agency asserts that its change in legal interpretation "corrects" a prior view. In addition to being in tension with this Court's decisions, that position conflicts with that of several federal Courts of Appeal. This case presents an important opportunity to clarify this Court's doctrines governing due process limits on administrative retroactivity. . By determining the due process limits on the retroactivity of agency interpretations of law, the Court's decision in this case would clarify what has become a fundamentally uncertain area of law since this Court's last decision on the topic, *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), decided more than twenty years ago.

In addition, this Term the Court will hear a case that addresses whether retroactive judicial changes in common-law rules can violate the Due Process Clause. *Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 998 So. 2d 1102 (Fla. 2008), *cert. granted*, No. 08-1151, 129 S. Ct. 2792 (June 15, 2009). Surely it would be an odd constitutional logic that would place constitutional limits on legislative and judicial retroactivity while leaving agencies completely immune from similar constraints. Yet that is precisely what the decisions below do. At a minimum, this petition should be held until the Court decides *Stop the Beach* and can consider the implications of its decision for this case.

I. THE DUE PROCESS CLAUSE IMPOSES LIMITS ON ADMINISTRATIVE RETROACTIVITY.

1. Two preliminary points should be noted. First, this Court has held that the Due Process Clause, as well as numerous other provisions of the Constitution, applies to Puerto Rico. *See generally Posadas De Puerto Rico Assoc. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 331 n.1 (1986); *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 7 (1982); *Torres v. Puerto Rico*, 442 U.S. 465, 471 (1979).[2] Second, petitioners could protect their due process rights in this case only through litigation in the Puerto Rico courts and in this petition for certiorari. The Butler Act, a statute analogous to the Tax Injunction Act, 28 U.S.C. § 1341 (2009), specifically denies federal district courts in Puerto Rico the power to hear any suit "for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico." 48 U.S.C. § 872 (2009). This Court is the only federal forum in which petitioners' due process rights can be vindicated.

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[2] The Court has not decided more specifically whether it is the Due Process Clause of the Fifth or the Fourteenth Amendment that binds Puerto Rico. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 668-669, n.5 (1974). Because the Fifth Amendment Takings Clause is incorporated through the Fourteenth Amendment Due Process Clause, this petition's Taking Clause arguments are subsumed in the petition's Due Process Clause arguments.

2. On the merits, this Court has recognized, in area after area of law, that retroactivity is disfavored "in accordance with 'fundamental notions of justice' that have been recognized throughout American and English legal history." *Eastern Enters. v. Apfel*, 524 U.S. 498, 532 (1998) (quoting *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (Scalia, J., concurring)). Thus, the Court has held that an independent rational justification for a statute's retroactive application must exist above and beyond the justification that suffices for the statute's prospective effect; the Due Process Clause provides special protection for "the interests in fair notice and repose that may be compromised by retroactive legislation." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994); *see also Eastern Enters.*, 524 U.S. at 558 (Breyer, J., joined by Stevens, Souter, and Ginsburg, JJ., dissenting) (concluding that the Due Process Clause protects against "an unfair retroactive assessment of liability [that] upsets settled expectations" because a law that does so "undermines a basic objective of law itself" that "hearkens back to the Magna Carta").

Under the Takings Clause, the Court has held legislation unconstitutional "if it imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability, and the extent of the liability is substantially disproportionate to the parties' experience." *Eastern Enters.*, 524 U.S. at 528–29. Under the Contract Clause, the Court has noted that "[r]etroactive legislation presents problems of

unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." *General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992); *see also United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977). In interpreting statutes, the Court has enforced a strong presumption against reading statutes to be retroactive, absent a clear statement from Congress itself. *Landgraf*, 511 U.S. at 280. In administrative law, the Court has held that federal agencies do not have the power to adopt retroactive regulations unless Congress has expressly delegated such an extraordinary power. *Bowen*, 488 U.S. at 208; *see also United States v. Pennsylvania Indus. Chem. Corp.*, 411 U.S. 655, 674 (1973) (holding that when private actors have relied in good-faith on consistent, longstanding administrative interpretations of law, "traditional notions of fairness" preclude the government from prosecuting based on alternative interpretation). Finally, in its separation-of-powers jurisprudence, the Court has held that Congress acts unconstitutionally when it retroactively tries to re-open final judicial judgments. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995).

3. Even in the area of taxation, where the Court has been somewhat more tolerant of retroactive legislation, the Court has nonetheless consistently held that courts must scrutinize such legislation carefully to ensure it satisfies a two-part test: the retroactivity must itself have a rational purpose and the period of retroactivity must be modest. *United States v. Carlton*, 512 U.S. 26, 30–

32 (1994); *see also Welch v. Henry*, 305 U.S. 134, 147 (1938) (noting that due process is violated when "retroactive application [of tax legislation] is so harsh and oppressive as to transgress the constitutional limitation"). Accordingly, the brief periods of retroactive taxation that this Court has upheld have extended back no farther than the date at which the change in taxation was proposed—typically, a period of a year or less before the date of the tax change's enactment. *See Carlton*, 512 U.S. at 37–38 (O'Connor, J., concurring) (in "every case in which we have upheld a retroactive federal tax statute against a due process challenge the law applied retroactively for only a relatively short period"). The Court has upheld brief periods of retroactivity on the theory that the government may reasonably prevent taxpayers from taking advantage of "a lengthy legislative process" by avoiding tax liability while the legislature debates statutory revisions. *See, e.g., United States v. Darusmont*, 449 U.S. 292, 296–97 (1981) (*per curiam*) (upholding 10–month retroactivity on the ground that this "customary congressional practice" generally has been "confined to short and limited periods required by the practicalities of producing national legislation."); *see also Carlton*, 512 U.S. at 38 (O'Connor, J., concurring) (a "period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise ... serious constitutional questions"). No justification of that sort is present here. In this case, the agency imposed 15 years of retroactive tax liabilities after it had encouraged investment-backed reliance on its prior legal interpretation.

In addition to considerations of justified reliance and fairness, retroactive government action also risks a "temptation to use retroactive legislation as a means of retribution against unpopular groups or individuals." *Landgraf*, 511 U.S. at 266. As Justice Kennedy has noted:

> If retroactive laws change the legal consequences of transactions long closed, the change can destroy the reasonable certainty and security which are the very objects of property ownership. As a consequence, due process protection for property must be understood to incorporate our settled tradition against retroactive laws of great severity. Groups targeted by retroactive laws, were they to be denied all protection, would have a justified fear that a government once formed to protect expectations now can destroy them. Both stability of investment and confidence in the constitutional system, then, are secured by due process restrictions against severe retroactive legislation.

Eastern Enters., 524 U.S. at 548–49 (Kennedy, J., concurring in the judgment and dissenting in part). The Court has recognized a fortress of protections that secure justified, investment-backed reliance, but the decisions below blast a gaping hole for retroactive agency interpretations of law.

4. The question in this case, of broad general importance, is whether these same principles have any application to agency decisions to make

changes in interpretation of law retroactive, especially when an agency's formal policies expressly invite investment-backed reliance by stating that any change in interpretation will be prospective only. If a legislature decided to amend a tax statute and reach back 15 years to tax, such a law would surely be unconstitutional under *Carlton* and related cases. In this case, Treasury adopted what it itself declared to be a "new public policy" regarding interpretation of the tax code. App. 175. The question presented here is stark: whether due process is *irrelevant*, as the courts below in effect held, when an agency, rather than a legislature, adopts a "new public policy" under the guise of interpretation.

As a general matter, the principles that disfavor retroactive enforcement of legal change apply to administrative agencies as well as to legislatures. *See Bowen*, 488 U.S. at 208 (because "[r]etroactivity is not favored in the law," "congressional enactments *and administrative rules* will not be construed to have retroactive effect unless their language requires this result") (emphasis added). No justification in principle or precedent exists for concluding that due process limits on retroactivity constrain legislatures but somehow leave the executive branch completely unfettered. No less than statutes, administrative rules and orders can give rise to private expectations protected by the Due Process Clauses of the Fifth and Fourteenth Amendments. *See, e.g.*, *Perry v. Sindermann*, 408 U.S. 593, 602–03 (1972) (noting that "rules and understandings, promulgated and fostered by state officials" may

create a property interest protected by the Fourteenth Amendment's Due Process Clause).

The various constitutional principles that limit the power of legislatures to disrupt settled expectations must limit less-democratically accountable administrative agencies as well. The legislature cannot delegate to an agency a power that the legislature itself is constitutionally prohibited from exercising. *Cf. Arizona Grocery Co. v. Atchison, Topeka, & Santa Fe Ry.*, 284 U.S. 370, 388 (1932) (the Commission's action "in fixing such rates for the future is subject to the same tests as to its validity as would be an act of Congress intended to accomplish the same purpose").

5. This is not to say that the general due process constraints that limit legislative retroactivity apply identically in the administrative context. The Due Process Clause prohibits government from retroactively disrupting the settled expectations of private persons who *reasonably rely* on prior law. In the agency context, for example, a legislature might not confer power on agency officials to make binding commitments to private parties; in that case, any reliance by private citizens would not be reasonable and principles of due process or equitable estoppel would not bar agency officials from reversing their own illegal actions on which those citizens may have relied. *See, e.g., Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 426 (1990). Agency rules and orders might also indicate implicitly or explicitly that they lack binding force of law. Informal guidance documents and other non-binding interpretative rules, for instance, do not purport to set forth

legally enforceable rules that bind either the government or private parties. *See, e.g., Gehl Co. v. Commissioner of Internal Revenue*, 795 F.2d 1324, 1333 (7th Cir. 1986) ("as a general rule, informal Treasury publications and pamphlets ... do not bind the government" and, because they "are simply guides, ... a taxpayer who relies on them generally does so at his own peril").

But this case poses a simpler and more fundamental issue. If, as here, an agency has undisputed statutory authority to issue binding assurances about the meaning of a statute and the agency exercises such authority to give assurances to private actors that a current rule or order will not be overturned retroactively, due process must then bar an agency from disrupting citizens' reliance on such statements through retroactive reversal of such rules or orders. Due process must constrain the power of agencies that formally bind themselves to non-retroactivity from then turning around and reversing their own rules and orders. Agency interpretations of law can justifiably generate reasonable, investment-backed reliance, as in this case, and the agency's destruction of that reliance can therefore similarly violate due process. At a minimum, due process must ensure that agencies not willfully induce citizens to rely on rulings and to make substantial investments that the agency then destroys by violating its own statutorily authorized, formal policies and promises.

II. THE COURTS BELOW WRONGLY HELD AGENCIES IMMUNE FROM DUE PROCESS LIMITS ON RETROACTIVE POLICYMAKING BY ALLOWING AN AGENCY TO "CORRECT" PRIOR RULINGS WITHOUT REGARD TO THE REASONABLENESS OR EXTENT OF PRIVATE, INVESTMENT-BACKED RELIANCE ON THOSE EARLIER RULINGS.

The central question at stake here is whether due process applies at all when agencies change their interpretations of law retroactively. The Court should grant *certiorari* to resolve that threshold issue. But in resolving that question, the Court should clarify that three essential principles, reflected in the Courts' retroactivity cases, should guide the determination whether an agency's retroactive reversal of its interpretation of law is consistent with due process or impermissibly destroys reasonable, investment-backed reliance: First, whether the agency has statutory authority to issue self-binding interpretations of law and has exercised that authority. Second, whether the private reliance that the agency's interpretation induced was reasonable. Third, whether the period of retroactivity is so severe in length as to be exceptionally harsh and oppressive under this Court's precedents. The retroactive administrative action in this case violates all three of these principles. Thus, this case presents a good vehicle for establishing the due process boundaries on retroactive agency interpretation of law.

A. Treasury Had Statutory Authority To Issue Self-Binding Letter Rulings Regarding Specific Taxpayers.

There is no dispute that Treasury was the agency charged with implementing Puerto Rico's tax code when it issued the income tax Letter Rulings at issue in this case. At the time the income tax Letter Rulings were issued, the authority was found in title 13, section 3429(a) of the laws of Puerto Rico. Puerto Rico Income Tax Act of 1954, P.R. Laws Ann. tit. 13, § 3429(a) (repealed 1994) ("The Secretary shall promulgate the necessary rules and regulations to enforce this Subtitle"). Equally clear, the Secretary had the power to define the retroactive effect of any "Treasury decision." Puerto Rico Income Tax Act of 1954, P.R. Laws Ann. tit. 13, § 3429(b) (repealed 1994). Furthermore, there is no dispute that Treasury was the agency charged with implementing Puerto Rico's property tax law when it issued the property tax Letter Ruling in 1987. At the time it issued the property tax Letter Ruling, Treasury's authority was codified in 13 L.P.R.A. § 3473. P.R. Laws Ann. tit. 13, § 473 (the "Secretary is authorized to publish all regulations, orders and instructions that are necessary for the execution of Title IX of the Political Code..."). All the relevant rulings were issued not by low-level administrative agents, but at highest levels of the Treasury, such as by subcabinet secretaries. App. 136, 141, 144, 160.

These grants of power are substantially identical to, and indeed were modeled on, statutory language conferring power on the U.S. Secretary of

the Treasury to implement the Internal Revenue Code through (among other decisions) private letter rulings to taxpayers. This power to issue private letter rulings has long been used by the IRS to issue rulings binding on the IRS in relation to the taxpayer who requested the ruling. Rev. Proc. 2006-1, 2006-1 I.R.B. 1, § 11(.06) ("Where the revocation or modification of a letter ruling is for reasons other than a change in facts as described in section 11.05 ..., it will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling."). Although some controversy exists over whether private letter rulings have precedential effect for third parties, *see* Benjamin J. Cohen & Catherine A. Harrington, *Is the Internal Revenue Service Bound by its Own Regulations and Rulings?*, 51 TAX LAW. 675 (1998), there is no controversy about the IRS's power to bind itself in relation to the specific persons who request its opinion in an official private letter ruling.

In light of these broad grants of authority, neither the courts below nor CRIM argued that Treasury lacked the statutory power to issue Letter Rulings to taxpayers providing them with binding guidance as to their tax liabilities. Instead, the courts below maintained that such letters could not be binding to the extent they contained errors of law, because such errors constituted "*ultra vires* acts by public officials" that "do not create rights, do not obligate the administrative organism, nor does it impede it from effectuating a correction." App. 39. In effect, the court below ruled that,

despite the existence of statutory authority to issue binding private Letter Rulings, the government must have the implied power to disregard its own assurances to taxpayers in order to correct what the government now believes was a mistake of law.

By overlooking Treasury's statutory authorization to issue binding Letter Rulings, the court of appeals ignored a constitutionally critical consideration for evaluating whether Triple-S acted reasonably in relying on Treasury's policies against retroactive changes in rulings. The general rule barring equitable estoppel against the government is fundamentally rooted in the notion that, absent legislation bestowing power on an official to bind the government, officials' representations about the law cannot estop the government from changing its views about the law's requirements. Critically, if the relevant statutes confer such power to issue binding rulings on officials, then this justification for the anti-estoppel rule evaporates. *See Office of Pers. Mgmt.*, 496 U.S. at 428 ("Congress may always exercise its power to expand recoveries for those who rely on mistaken advice should it choose to do so").

B. Triple-S's Reliance On Treasury's Prior Rulings Was Reasonable Because Treasury Had Expressly Given Assurances That Letter Rulings Would Not Be Retroactively Revoked.

The letter rulings in this case are fundamentally different in a second respect from any government action that this Court has permitted to be retroactively revoked. Treasury

itself expressly stated in official policy documents that its rulings would not be overturned retroactively with respect to the specific taxpayer to whom the earlier ruling had been issued. Circular 86-3, which Treasury issued in 1986, specifically states that, "[e]xcept in rare or unusual circumstances, the revocation or modification of a ruling or administrative determination will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued." App. 187. The Circular provides three conditions for the operation of this anti-retroactivity policy, and no dispute exists that all three are met in this case. The property-tax rulings that Treasury issued to Triple-S in 1987 were issued pursuant to the terms and policies of this Circular. In 1999, Treasury adopted a new Circular, 99-01, that included the same policy commitment against retroactivity. App. 212.

The basis of the 15-year retroactivity imposed in this case has nothing to do with any "rare and unusual circumstances" that justify departing from the anti-retroactivity policy to which Treasury committed itself and to which CRIM was also obligated. The agency's retroactive decision does not identify any such circumstances, nor do the decisions of the courts below. Instead, the lower courts believed it wholly sufficient to ask a completely different question: whether Treasury had erred in its earlier analysis of the tax code such that its earlier rulings were "null." In effect, this holding means that Treasury policies against retroactive changes are binding only until Treasury (or a successor agency) changes its mind about the

ruling's merits—a view that treats as legally irrelevant Treasury's own Circulars committing to a policy that its rulings would survive any later change of mind Treasury might have.

Treasury's endorsement of an anti-retroactivity policy distinguishes this case from other decisions in which this Court has upheld the retroactive repeal of agency rulings. In other contexts, the agency in question had never adopted policies or extended specific assurance that its ruling would not be retroactively revised. Absent such assurances, the Court has adopted the position that the agency reserves the power to correct its prior mistakes of law through retroactive revision of its earlier rulings. *See, e.g., Dixon v. United States*, 381 U.S. 68, 73 (1965). In such cases, any reliance would be unreasonable. Not so here.

This case is instead on par with decisions of lower courts that have held it an abuse of discretion for agencies retroactively to repeal their rulings after making assurances that the agency would forego retroactive changes. In *Lesavoy Foundation v. Commissioner of Internal Revenue*, 238 F.2d 589 (3d Cir. 1956), for instance, the Third Circuit held that the Commissioner abused his discretion by retroactively revoking a certificate of exemption given to the Foundation in 1945 and retroactively assessing the Foundation for five years of taxes between 1946 and 1951. Acknowledging that "the Commissioner may change his mind when he believes he had made a mistake in a matter of fact or law," the Third Circuit nonetheless noted that "it is quite a different matter to say that ... the Commissioner may arbitrarily and without limit

have the effect of that change go back over previous years during which the taxpayer operated under the previous ruling." *Id.* at 591. In finding that the administrative retroactivity was an abuse of discretion under the statute, the Third Circuit placed special emphasis on the individualized nature of the ruling and the Commissioner's past custom and written policy of not revoking retroactively exempt-status rulings as to the persons to whom they were issued. *Id.* at 591 & nn. 5–6.

Similarly, the Seventh Circuit in *Gehl Co. v. Commissioner of Internal Revenue*, 795 F.2d 1324 (7th Cir. 1986), held that the Commissioner abused his discretion in enforcing an interpretation of the disputed tax provision that was different from that contained in the IRS's handbook published for the guidance of taxpayers. *Id.* at 1333–34. While acknowledging that such guidance documents did not normally estop the government from changing its legal interpretations, the Seventh Circuit emphasized the specific assurance in the handbook stating that the handbook's interpretation would not be retroactively repealed, noting that such a statement was "more than an interpretation of existing law; it is an express promise that the Commissioner will not in the future exercise his discretion to apply adverse changes retroactively." *Id.* at 1333. According to the Seventh Circuit,

> This is a specific statement designed to elicit reliance on the part of taxpayers, as opposed to a typical publication which may well say nothing on the issue of the retroactivity of future changes. While

> silence on this subject may fairly be viewed as implicitly saying "beware to those who rely on this publication; you do so at your own peril," an express promise cannot fairly be construed in this fashion .... Not only did this promise reasonably induce reliance; the promise was originally made specifically to create such reliance. To allow the Treasury to renege on such express promises with impunity is grossly unfair. As the Second Circuit aptly noted, "the retroactive applications of regulations in the face of a promise of prospectivity smells of a bushwack."

Gehl Co., 795 F.2d at 1333 (citing *LeCroy Research Sys. Corp. v. Commissioner of Internal Revenue*, 751 F.2d 123, 124, 128 (2d Cir. 1984)).

These cases address the statutory "abuse-of-discretion" standard under the Internal Revenue Code, *see id.* at 1332, but should inform the analysis of whether administrative retroactivity, including that at issue here, disrupts reasonable reliance on government's commitments. Both the standards of constitutional due process and the statutory "abuse-of-discretion" standard incorporate concern for the disruption of private expectations. *See Anderson, Clayton, & Co. v. United States*, 562 F.2d 972, 981 (5th Cir. 1977).

As *Gehl Company* notes, such a flagrant disregard for the agency's own assurances to specific taxpayers approaches an impairment of the government's own contract with a private party. *Cf. United States v. Winstar*, 518 U.S. 839 (1996).

In effect, Treasury entered into a bargain with Triple-S under which, in return for Triple-S's compliance with elaborate conditions insuring that Triple-S's resources were devoted to public health, the Treasury would treat Triple-S as a non-profit corporation for the purposes of taxation.

By operating under the terms of the exemptions stipulated in the rulings, Triple-S was required to invest its surplus in a defined manner (lower premium costs, etc.), was precluded from distributing dividends, and was required to structure itself in a variety of other ways. Had CRIM informed Triple-S in 1991 that it would not be entitled to the property tax exemptions that had originally been recognized by Treasury in 1987, Triple-S might well have foregone these costly measures and instead conducted business as a for-profit entity. Indeed, that is precisely what occurred in 2003 when Triple-S was notified that its tax exemption was going to be revoked prospectively: Triple-S decided to change its structure and corporate philosophy to that of a publicly traded for-profit corporation with the capacity to conduct its business and invest its surplus free from the requirements that the agency rulings had previously imposed.

Having secured public benefits from Triple-S for fifteen years, CRIM now seeks to renege on this bargain in order to get the benefits of foregone property tax revenues that had been offered to induce Triple-S to maintain its public health commitment. To imagine a more direct violation of the *quid pro quo* inherent in the Treasury's tax ruling would be difficult. Such repudiation of

government obligations meant to induce investment-backed reliance are not only unfairly manipulative to the individual, they are also detrimental to the long-term interests of government. *See Gehl Co.*, 795 F.2d at 1334; *see also* Kyle D. Logue, *Tax Transitions, Opportunistic Retroactivity, and the Benefits of Government Precommitment*, 94 MICH. L. REV. 1129, 1139 (1996) (observing that "[b]ecause taxpayers who relied on the repealed incentive credit were 'burned' by the government, future incentive credits would have to be more generous (for example, the credit percentage would have to be greater to achieve the same amount of increased investment in the targeted asset or activity")).

C. The Burden On Triple-S's Expectations Was Extraordinarily Severe In Light Of The Extreme Length Of Retroactivity Imposed.

CRIM ruled that Triple-S owed property taxes for a retroactivity period of fifteen years, a period apparently based on nothing more than the fact that CRIM itself came into existence only in 1991. This breathtaking back-to-creation position knows no limits: if CRIM had existed in the late 1980s, its position is that it would be entitled to demand retroactive taxes reaching back over 20 years. As this Court has noted in the context of tax legislation, limited periods of retroactivity are constitutionally permitted because they are justified by the legitimate interest in preventing taxpayers from avoiding imminent or pending changes in tax policy of which they have fair notice. *See supra* at 15–16. The length of the retroactivity

period is highly relevant, therefore, to the constitutionality of administrative retroactivity. Due process requires that courts assess, as the courts below did not, whether an agency has a rational justification for the extent of the retroactivity and how harsh the retroactivity period is to private actors.

In sum, the courts below failed to give any weight to a private entity's reasonable, investment-backed reliance on expressly binding and statutorily authorized agency commitments. The decisions below ignore *all* the considerations offered above: the Treasury's specific policy guidelines stating that prior rulings would not be overturned retroactively, the statutory authorization for making binding Letter Rulings, the six formal, consistent rulings of tax-exempt status issued over nearly 30 years, and the extraordinarily long period of retroactivity. Instead of evaluating the reasonableness of Triple-S's reliance or the burden on Triple-S's expectations, the court of appeals rooted its holding in the sole consideration that all six of the earlier administrative rulings were erroneous. The paramount—indeed, exclusive—consideration in the court's due process analysis was that administrative agencies must have unlimited power to correct prior "mistakes" by retroactively overruling those mistakes.

This analysis amounts to blanket immunity for administrative retroactivity. Presumably, agencies do not reverse prior rules or adjudicated precedents unless they believe that the new decision better captures the language or purpose of the statute

than the rules and precedents being reversed. And, if the new interpretation is not "correct," it will not be in effect, prospectively or retrospectively. To give agencies *carte blanche* regardless of the length of the retroactivity period, past assurances by the agency, or reasonableness of the private citizen's reliance is to eviscerate any due process restraint on retroactive agency policy-making. *Cf. Bowen*, 488 U.S. at 225 (Scalia, J., concurring) (noting that "curative retroactivity" would "make a mockery" of APA limits on retroactive rule-making because agencies would always be free to "reissue" a rule on a retroactive basis).

In order to place minimal outside limits on such regulatory uncertainty, due process requires that agencies and reviewing courts give at least some consideration to factors other than the agency's desire for the fullest retroactive enforcement of new policies and interpretations. These factors include the reasonableness of private reliance on the prior legal regime, the severity of the burden on private parties, the length of the retroactivity period, and the nature of the government's interest in retroactivity. Such factors have always been considered under constitutional retroactivity analysis. *See Carlton*, 512 U.S. at 27 (finding a rational basis for retroactivity because "Congress acted promptly and established only a modest period of retroactivity").

III. THE TENSION BETWEEN *CHEVRON* AND RETROACTIVE AGENCY INTERPRETATIONS OF LAW FURTHER ENHANCES THE IMPORTANCE OF THE QUESTION PRESENTED.

The importance of the legal question presented here is magnified by the tension between the position the courts below adopted and the line of cases represented by *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967 (2005), and last Term's decision in *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (2009). These cases recognize that there may be a range of permissible agency interpretations of a statute, that a single "right" agency interpretation of a statute does not necessarily exist, and that agencies may legitimately adopt different positions over time concerning the meaning of a statute—including an interpretation that directly contradicts an earlier interpretation. *See, e.g., Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 742 (1996) (noting that "change is not invalidating, since the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency"). But precisely because of the greater discretion the *Chevron* regime recognizes for agency legal interpretation, it becomes all the more imperative that, when agencies do change their legal interpretations, agencies be constrained by the due process principles that apply to retroactive legal changes, including that there be adequate justification for

the period of retroactivity that takes account of the change-in-position reliance interests that a prior, binding interpretation invited.

Before *Chevron*, rule-of-law values in the context of agency interpretations of law were enforced, in part, by this Court's reluctance to defer to agency interpretations that shifted dramatically over time. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (noting that the extent of judicial deference to an agency interpretation will vary depending upon that interpretation's "consistency with earlier and later pronouncements"); *see also* STEPHEN G. BREYER ET AL., ADMINISTRATIVE LAW AND REGULATORY POLICY 339 (6th ed. 2006) ("Before *Chevron*, courts held that longstanding and consistent agency interpretations were entitled to special deference; a showing that agencies had been inconsistent would reduce or eliminate deference to an agency interpretation of law."). Because *Chevron*, as elaborated in *Brand X* and *Fox*, permits agencies to be granted deference even for inconsistent interpretations of law, rule-of-law values require that courts ensure that retroactive application of changed agency legal interpretations be adequately justified. Otherwise, *Chevron* risks becoming a vehicle for undermining the core due process values of fair notice and justifiable reliance.

To be sure, *Chevron* does not directly apply of its own force to state agencies, as in this case. But the general due process retroactivity principles remain the same: agencies may be free to change their legal interpretations prospectively, but when they seek to make those changes retroactive, the risks of exploiting vulnerable individuals or

entities, and the potentially harsh and oppressive burdens of changes that undermine reasonable, investment-backed reliance interests, require at the least that such retroactive changes be justified by more than an agency's mere decision to adopt a "new public policy" concerning the meaning of a law. Moreover, the greater the flexibility federal agencies have to shift their policies, the more important these general due process principles become. As this Court noted in *FCC v. Fox Television Stations*, it would be arbitrary and capricious when agencies change their legal interpretations for an agency to ignore the fact that "its prior policy has engendered serious reliance interests that must be taken into account." 129 S. Ct. at 1811. Yet that is precisely what the agency and the courts below did here. The more free that agencies are to change their legal interpretations, the more important it becomes for courts to enforce against agencies, as the Court has long done against legislatures, due process principles that require adequate justification for making retroactive changes that defeat reasonable-reliance interests. The courts below failed to require any such justification at all.

IV. AT A MINIMUM THE COURT SHOULD HOLD THIS PETITION PENDING DECISION OF A CASE THIS TERM.

At a minimum, this Court should hold this petition pending its decision in *Stop the Beach Renourishment, Inc. v Florida Department of Environmental Protection*, No. 08-1151. That case raises the question whether the judiciary can, consistent with the Due Process Clause,

retroactively eliminate property rights by reinterpreting state law. Stop the Beach Renourishment argued in its petition for certiorari that "a state court cannot by *ipse dixit* proclaim 100 years of property rights never really existed." *Stop the Beach*, No. 08-1151, Petition for Writ of Certiorari, at 20. As Justice Stewart explained in his concurring opinion in *Hughes v. Washington*, 389 U.S. 290 (1967), "a State cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed at all." *Id.* at 296–97.

CRIM eliminated Triple-S's due process rights in precisely the same manner. CRIM merely declared that the earlier grants of tax exemption were null and void and should be treated as if they never existed, despite the fact that those rulings had been in effect for over two decades and that Triple-S had investment-backed reliance interests based on Treasury having encouraged Triple-S to organize its structure and operation around those rulings.

Just as Triple-S does here, the petitioner in *Stop the Beach* specifically highlighted the retroactive effect of the change in law as the due process deficiency. The petition for certiorari in that case cited approvingly the Ninth Circuit's decision in *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir. 1985), *rev'd on procedural grounds*, 477 U.S. 902 (1986), in which the Ninth Circuit held that states are free to change laws by either judicial or legislative action but that *retroactive* application of

a change in law was what triggered due process concerns. *Id.* at 1474. In that case, the change by the judiciary amounted to a judicial taking.

If the Court ultimately agrees with the petitioner's argument in *Stop the Beach* and holds that judicial takings through retroactive changes in state law violate the Due Process Clause, this petition should be granted and the judgment below vacated and remanded. For if a state does not avoid its due process obligation not to take property retroactively by using the judiciary to do its bidding, surely it cannot achieve the same ends by having a right retroactively stripped by an executive branch agency. Indeed, as this Court stated more than a century ago, "the prohibitions of the [Fourteenth] amendment refer to all instrumentalities of the state—to its legislative, executive, and judicial authorities—and therefore whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation of the state, violates the constitutional inhibition." *Chicago Burlington & Quincy R.R. Co. v. Chicago*, 166 U.S. 226, 233–34 (1897) (internal quotation and citation omitted).

There should be no doubt that it would defy constitutional logic for due process to constrain the extent to which the legislative branch can make new law retroactively and the extent to which the judicial branch can make new common law retroactively, but for executive branch agencies to be immune from similar constraints when they make new law through reinterpreting statutes.

CONCLUSION

The petition for certiorari should be granted or, in the alternative, held pending resolution of *Stop the Beach Renourishment, Inc., v. Florida Department of Environmental Protection*, No. 08-1151.

Respectfully submitted,

Richard H. Pildes
Counsel of Record
Vanderbilt Hall Room 507
40 Washington Sq. So.
New York City, NY 10012
(212) 998-6377

Paul D. Clement
King & Spalding LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

Pedro E. Ortiz Alvarez
P.O. Box 9009
Ponce, PR 00732

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Appendix A

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
APPEALS COURT

SAN JUAN JUDICIAL REGION

* CASE NO. KLAN200701749
*
* RE: CIVIL APPEAL
*
*
TRIPLE S *
MANAGEMENT CORP *
*
VS *
*
CENTRO DE RECAUDACION DE INGRESOS MUNI
[MUNICIPAL REVENUE COLLECTION CENTER]

ATTY JOSÉ A RIVERA AYALA
LAW OFFICE OF PEDRO ORTIZ ÁLVAREZ
PO BOX 9009
PONCE PR 00732-9009

NOTIFICATION OF JUDGMENT

THE UNDERSIGNED CLERK NOTIFIES YOU THAT THIS COURT HAS ISSUED A JUDGMENT IN THE CAPTIONED CASE DATED JUNE 30, 2008, WHICH HAS BEEN DULY REGISTERED AND FILED IN THE RECORDS OF THIS CASE, WHEREIN YOU MAY INFORM YOURSELF REGARDING THE TERMS OF THE SAME.

AND, SINCE YOU ARE OR REPRESENT THE PARTY PREJUDICED BY THE

JUDGMENT, OF WHICH AN APPEAL CAN BE TAKEN, I ADDRESS THIS NOTIFICATION TO YOU, HAVING FILED IN THE RECORDS OF THIS CASE A COPY OF THE SAME DATED JULY 17, 2008.

ATTY JESUS A RODRIGUEZ URBANO –
THE LAW OFFICES OF PEDRO ORTIZ
PO BOX 9009 PONCE, PR 00731

ATTY EDWIN ORTIZ PIETRI – MUNICIPAL REVENUE COLLECTION CENTER
PO BOX 195387 SAN JUAN, PR 00936-5387

GENERAL CLERK OF SAN JUAN (SUP) –
PO BOX 190887 SAN JUAN, PR 00919

SAN JUAN, PUERTO RICO ON JULY 17 OF 2008 .

MARÍA ELENA FÉREZ ORTIZ
CLERK
[illegible handwriting]

BY: LISANDRA CORREA RAMOS
ASSISTANT CLERK I

CONT. CASE NUM. KLAN200701749

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT TRANSLATION OF ITS ORIGINAL IN THE SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

OAT 704-1 - Notification of Judgment - CA

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
SAN JUAN JUDICIAL REGION
Panel IV

TRIPLE S MANAGEMENT, CORP. AND TRIPLE S, INC. Appellants v. CENTRO DE RECAUDACÍON DE INGRESOS MUNICIPALES [Municipal Revenue Collection Center] Appellee	KLAN200701749 KLAN200800249	APPEAL From the Court of First Instance, Superior Court of San Juan Civil No. K C02006-0029(901)

Panel composed of its president, Judge López Feliciano, and Judges Pabón Carneco and Hernández Serrano

López Feliciano, Presiding Judge

JUDGMENT

In San Juan, Puerto Rico, on June 30, 2008.

Through appeal KLAN200701749, Triple S Management Corp. and Triple S, Inc. (Triple S) appear before this Court of Appeals requesting the revocation of a judgment entered on October 29, 2007 and notified the following day, by the Superior Court of San Juan of the Court of First Instance.

The judgment issued by the Court of First Instance denied a summary judgment motion presented by Triple S and, at the same time, granted a summary judgment motion presented by the Municipal Revenue Collection Center (CRIM). Consequently, it dismissed the complaint presented by Triple S, ordering the retroactive payment of certain real property taxes that had been duly notified and demanded by the CRIM.

Subsequently, Triple S filed before this Court the appeal KLAN200800249. In this appeal, they request the revocation of another judgment issued by the Court of First Instance on December 5, 2007 and notified on January 22, 2008. Through this judgment the Court of First Instance denied a summary judgment motion presented by Triple S, and, at the same time, granted a summary judgment motion presented by the CRIM. As a result, it ordered Triple S to proceed with the payment of the taxes owed against its personal property during the years 1991-2002.

On February 21, 2008, Triple S presented a "Motion to Request Consolidation." Because the

appeals, KLAN200701749 and KLAN0800249, involved the same facts and the same parties, we hereby consolidate them.

Having analyzed the arguments of the parties, we now resolve the controversies presented for our consideration.

I.

Seguros de Salud de Puerto Rico, Inc., better known as Triple S, was organized in 1959 as a for-profit corporation and insurer, pursuant to Act No. 3 of January 9, 1956, known as "General Corporations Law of Puerto Rico"[1] and the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 101 *et seq.*

On July 16, 1976, through an administrative determination, the Department of the Treasury granted an income tax exemption to Triple S, in conformity with Section 101(8) of the Act No. 91 of June 29, 1954, as amended, known as the "Income Tax Act of 1954", 13 L.P.R.A. sec. 3108.[2]

On June 12, 1987, the Department of the Treasury extended the tax exemption granted in order to cover Triple S's real property as well as personal property, based on the provisions in Article

---

[1] Act No. 3, supra was repealed by Act No. 144 of August 10, 1995, as amended, known as "General Corporations Act of 1995", 14 L.P.R.A. sec. 2601 *et seq.*

[2] This section currently corresponds to 13 L.P.R.A. sec. 8506(6).

291(t) of the Political Code of Puerto Rico, 13 L.P.R.A. sec. 551(t).[3]

On November 6, 1988, the Department of the Treasury again ratified the tax exemption granted to Triple S under the repealed Income Tax Act of 1954, supra, and in section 1101(6) of the Act No. 120 of October 31, 1994, as amended, known as the "Internal Revenue Code of 1994" (Internal Revenue Code), 13 L.P.R.A. sec. 8501(6). Likewise, on December 15, 1998, the CRIM ratified Triple S's tax exemption against its personal as well as real property.

By letter dated July 31, 2003, the Department of the Treasury gave notice to Triple S of its intention to repeal the administrative determination it had issued on November 6, 1998, under section 1101(6) of the Internal Revenue Code. The Department of the Treasury informed Triple S of the following:

> ... the new public policy that the Department of the Treasury has adopted when interpreting the scope of section 1101(6) of the Code is that said section only covers entities that are organized for non-profit purposes and that, according to the described public policy, the Secretary of the Treasury cannot continue to treat Triple S as an entity described in section 1101(6) of the Code notwithstanding Triple S and

---

[3] This section currently corresponds to Article 5.01 of Act No. 83 of August 31, 1991, as amended, known as "Municipal Property Tax Act of 1991" Act No. 83), 21 L.P.R.A. sec. 5151 (g).

> Management's compliance with the conditions of the Determination for the benefit of the exemption granted therein. Therefore, the Department hereby notifies you that the Determination will no longer be in effect and Triple S will be subject to income tax under the Code for the tax years beginning on and after January 1, 2003.
>
> As a result of the above, we also notify you that in view of the fact that Triple S is a for-profit corporation and has earnings and profits which have accumulated during the periods for which the company and its predecessor were granted tax exemption under the Code and the Income Tax Act of 1954, as amended, a levy lies against said earnings and profits since the same are available for the distribution of dividends. The tax shall be imposed imputing the earnings and profits described as a dividend to Triple S Management Corporation.

On that same date, the Department of the Treasury and Triple S signed a "Final Agreement" in which both parties stipulated that Triple S would pay the Department of the Treasury $37,000,000, as a tax against the assigned dividends as of the date of the agreement. By April 15, 2004, it would pay $14,773,839, for the tax corresponding to the 2003 tax year.

Moreover, on February 1, 2006, the CRIM notified Triple S of its decision to retroactively revoke the administrative determination issued on

December 15, 1998, through which it had granted a tax exemption against its personal and real property. In the communication the CRIM informed the following:

> As a result of this revocation, the responsibility of Triple S, with regards to the personal property tax shall begin with the tax form of natural year 1991, with regards to the real property tax it shall be effective from the fiscal year 1992-1993 onward.
>
> Our decision is founded on the fact that the compliance by Triple S and/or its successors with the conditions imposed by the Department of the Treasury through the different administrative determinations did not have the effect of converting them into not-for-profit entities. Consequently, the 1987 administrative determination of the Department of the Treasury and the 1998 determination of the CRIM to concede the exemption to Triple S pursuant to the provisions of Art. 291(t) of the Political Code of 1902 and of Art. 5.01(g) of Act 83 were erroneous and did not create any right in their favor.

Subsequently, on March 1 and March 3 of 2006, respectively, the CRIM sent Triple S notice and demands for payment of the tax, against personal property as well as real property. With regards to real property, the CRIM demanded from Triple S the payment of $1,326,024.52; with

regards to personal property, it demanded the payment of $3,998,341.27.

On March 24, 2006, Triple S presented a "Petition for Administrative Review" before the CRIM. The CRIM did not act on said petition, thus the petition was assumed to be denied.

Procedural History Pertinent to KLAN200701749

On May 24, 2006, Triple S filed in the Court of First Instance a complaint to challenge the levy of real property tax, civil number KCO2006-0029 (901). In its complaint, it alleged that the retroactive revocation of its tax exemption was null, illegal and unconstitutional. On July 7, 2006, the CRIM answered the complaint.

After certain procedural events that need not be recounted in detail, on June 13, 2007, Triple S presented a "Summary Judgment Petition." In its motion, Triple S alleged that the exemption granted to it, by the Department of the Treasury as well as by the CRIM, was entitled to a presumption of correctness which could only be rebutted by reasonable and credible proof that the exemption was not in accordance with the law. It also alleged that the CRIM was bound by the policy of prospective revocation established in Circular Letter 86-03 of the Department of the Treasury of April 21, 1986, since that was the policy in effect when CRIM's operations began in 1991.

Triple S also argued that the retroactivity of the revocation of the granted tax exemption created a situation of injustice which should be declared unconstitutional. It indicated that the

administrative rulings of the Department of the Treasury and of the CRIM amounted to a contractual obligation to maintain the tax exemption so long as Triple S complied with the provisions to continue to operate as a de facto not-for-profit organization.

Based on all of the above, it requested that the CRIM be ordered to desist from retroactively collecting taxes against its real property; and, as a result, urged that the CRIM be ordered to collect said taxes in a prospective manner, following the parameters of the agreement signed between the Department of the Treasury and Triple S. On July 6, 2007, the CRIM presented a "Motion in Opposition to the Motion for Summary Judgment and Petition for Summary Judgment" in its favor. In the motion, it argued in synthesis that the granting of the tax exemption to Triple S was the result of *ultra vires* and null actions; and, therefore it was responsible for the payment of taxes for its real property during the years of 1991 to 2002.

The CRIM indicated that it was not necessary to address the issue of retroactivity since the tax levy was issued as a consequence of the nullity of the granted exemption. It indicated that such "exemption had no place within the clear language utilized by the legislator, which renders it null and requires the collection of the unpaid taxes."

The CRIM also established that the purpose of the Department of the Treasury's public policy change was to amend the error of having granted an unwarranted tax exemption to Triple S. It indicated that the final agreement signed between the Department of the Treasury and Triple S

accomplished the agency's recovery of the funds equivalent to the income taxes not paid of Triple S to said department during the effective period of the administrative rulings. It asserted that, confronted with the nullity of the administrative rulings, the revocation would also have a retroactive effect with regards to the CRIM.

After the presentation of various briefs related to the petitions for summary judgment, on October 29, 2007, and notified the following day, the Court of First Instance issued its judgment in the case. In it, the Court denied the motion for summary judgment regarding the challenge to the levy of real property taxes presented by Triple S; and granted the motion for summary judgment presented by the CRIM. It ordered Triple S to proceed with the payment of the real property taxes owed that had been notified and demanded by the CRIM.

Triple S requested reconsideration, which was denied by the appealed forum. Taking exception, it presented before this Appellate Forum the appeal KLAN0701749.

Procedural History Pertinent to KLAN200800249

On May 28, 2007, [sic] Triple S presented a complaint to challenge the levy of personal property taxes, civil number KC02006-0014 (603). In the same it alleged that the retroactive revocation of its tax exemption was null, illegal and unconstitutional. On June 26, 2006, the CRIM answered the complaint.

On May 13, 2007, Triple S presented a "Petition for Summary Judgment."[4] In said motion Triple S argued the same allegations that it raised in case KC02006-0029 (901), detailed above, but this time in reference to the personal property taxes.

On July 6, 2007, the CRIM presented a "Motion in Opposition to Motion for Summary Judgment and Petition for Summary Judgment." As did Triple S, the CRIM re-argued the same allegations it had presented in its opposition to request for summary judgment in case KC02006-0029 (901), mentioned above.

It was at this point that the Court of First Instance issued its judgment on December 5, 2007, and notified on January 22, 2008. In its judgment, it denied the motion for summary judgment to challenge the personal property tax levy presented by Triple S, based on the reasoning that the administrative determinations leading to the grant of the tax exemption to this corporation were *ultra vires* and null. As a result, it granted the motion for summary judgment presented by the CRIM, and ordered Triple S to proceed with the payment of the taxes owed against its personal property during the years 1991 to 2002.

Triple S requested reconsideration, which was summarily denied. Taking exception, it presented

---

[4] This motion is identical to the "Motion for Summary Judgment" presented by the Triple S in the case KCO2006-0029 (901).

before this Appellate Forum the appeal KLAN200800249.

II.

In the appeal KLAN200701749, Triple S indicates that the Court of First Instance committed the following errors when issuing its holding:

> The Honorable Court of First Instance erred when it issued summary judgment in favor of the CRIM even though in the complaint the appellants raised various controversies that have not been adjudicated.
>
> The Honorable Court erred when it resolved that the administrative determination issued to the appellants by the Department of the Treasury is in conflict with Art. 5.01 of Act No. 80 of August 30, 1991 and that, therefore, the appellants were not entitled to the exemption for real property taxes.
>
> The Honorable Court of First Instance erred by not giving deference to a reasonable administrative interpretation, which was neither capricious nor arbitrary.
>
> The Honorable Court of First Instance erred by not resolving that the revocation of the tax exemption over real property should have had prospective effect in conformity with the doctrine of Avon Products, Inc. v. Secretario del Trabajo, 105 D.P.R. 803 (1977).

The Honorable Court of First Instance erred by not applying the doctrine of the mistake in law to the facts of the case at bar.

The Honorable Court of First Instance erred by resolving that the notifications of real property tax do not violate the Due Process Clause.

The Honorable Court of First Instance erred by not resolving that retroactive revocation is an impairment of contractual obligations.

The Honorable Court of First Instance erred by resolving that the CRIM could repeal the policy of prospective revocation of exemptions and, as a result, collect the amounts in which the appellants benefited from the exemption retroactively.

The Honorable Court of First Instance erred by not allowing a brief period for discovery related to the issue of time bar.

Moreover, in the appeal KLAN200800249 Triple S points to the commission of the following errors:

The Honorable Court of First Instance erred by resolving that the action to collect the personal property taxes for the years 1991-2000 is not fatally time barred.

The Honorable Court erred when it resolved that the administrative determination issued to the appellants by the Department of the Treasury and confirmed by the CRIM is in conflict with

Art. 5.01 of Act No. 80 of August 30, 1991 and that, therefore, the appellants were not entitled to the exemption for personal property taxes.

The Honorable Court of First Instance erred by not giving judicial deference to a reasonable administrative interpretation, which was neither capricious nor arbitrary.

The Honorable Court of First Instance erred by confusing a change in public policy with a null decision.

The Honorable Court of First Instance erred by resolving that the CRIM could strike the policy of prospective revocation of exemptions and, as a result, collect the amount by which the appellants benefited from the tax exemption.

The Honorable Court of First Instance erred by not resolving that the revocation of the tax exemption over personal property should have had a prospective effect in conformity with the doctrine of Avon Products, Inc. v. Secretario del Trabaio, 105 D.P.R. 803 (1977), and the public policy of the Department of the Treasury, which was inherited by the CRIM.

The Honorable Court of First Instance erred by not applying by analogy the doctrine of mistake in law and the doctrine of Cartagena de Jesus v. E.L.A., 116 D.P.R. 254 (1985).

The Honorable Court of First Instance erred by resolving that the notifications of personal

property tax do not violate the Due Process Clause.

The Honorable Court of First Instance erred by not resolving that the retroactive, revocation is an impairment of contractual obligations.

The Honorable Court of First Instance erred by not recognizing the protections that our legal system grants to the good faith actions of the appellants.

III.

Now we shall discuss below the norms that in our opinion are applicable to the issues raised by the parties.

-A-

It is a recognized norm that the statutes which impose the payment of taxes have to be interpreted restrictively. BBC Realty v. Secretario, 166 D.P.R. ___ (2005), 2005 T.S.P.R. 186, 2005 T.S.P.R. 191.

There are three cardinal principles in the interpretation of the tax statutes: (1) when the language is clear and unequivocal, the text of the law is the expression par excellence of the legislative intention; (2) it is not presumed that the legislature engages in acts of futility; and, (3) the tax legislation is not interpreted in an expansive way, rather it should be interpreted in a fair manner and pursuant to its own express terms. Id.

The authority to impose taxes is an essential attribute of the sovereignty of the State and its exercise is a function properly belonging to the

government. Municipio v. Professional, 171 D.P.R. ___ 2007, 2007 T.S.P.R. 95, 2007 J.T.S. 101; Burlintong Air Exp. Inc. v. Mun. Carolina, 154 D.P.R. 588, 197 (2001).

When passing judgment over the power of the State to levy and collect taxes, our Supreme Court has pronounced that "[t]he collection of taxes by the State is not unrestricted. Said power is subject to minimum proceedings of 'due process of law' for the actionability and validity of the debt, and to the descriptive terms provided in the different statutes." Diaz v. Secretario de Hacienda, 168 D.P.R. __ (2006), 2006 T.S.P.R. 85, 2006 J.T.S. 94; Municipio v. Professional, supra. These restrictions on the power to levy and collect taxes are intended to prevent the State from exercising their authority arbitrarily and to confer to the taxpayer certain procedural guarantees within the process of levying and collecting a tax debt.

-B-

-i-

Act No. 80 of August 30, 1991, as amended, known as the "Municipal Revenue Collection Center Act", 21 L.P.R.A. sec 5801 *et* seq., created the CRIM as a "municipal entity" independent and separate from any other agency or instrumentality of the state, with the ultimate purpose of granting municipalities more control over the revenue from property taxes and in this way preventing the central government from unduly controlling the fiscal process of the municipalities.

Pursuant to Act No. 80, supra, the legislature yielded to the municipalities the totality of control

over personal and real property tax. The CRIM was established solely "with the purpose that — in representation of the municipalities under its control — it assumes the responsibilities related to property tax that previously were performed by the Central Government." See Statement of Purpose of Act No. 80, supra; C.R.I.M. v. Fed. Central Trabajadores, 142 D.P.R. 968, 974 (1997).

The CRIM is in charge of fiscal services, and its primary responsibility is "to collect, receive and distribute the public funds" that correspond to the municipalities. 21 L.P.R.A. sec. 5802. In fact, Act No. 80, supra, transferred to it "all of the powers, functions, and obligations conferred by law or regulation to the Department of the Treasury with regards to the appraisal, the notification of levy, the determination and collection of property tax." C.R.I.M. v. Fed. Central Trabajadores, supra, pp. 974-975.

-ii-

On August 30, 1991, Act No. 83, supra, was also approved. The purpose of the same was to transfer to the CRIM the powers, faculties, and functions that up until then had been possessed by the Department of the Treasury with regards to personal and property tax. Article 3.22 of Act No. 83, 21 L.P.R.A. sec. 5072, provides that:

> Whenever the Collection Center becomes aware that any real property subject to taxes has been omitted from the appraisal of the property of any taxpayer, during any fiscal year or years, it shall be its duty to have it appraised immediately for the years that said property has not been

> appraised, and to add it to the tax list for said years, proceeding to the collection of the corresponding taxes, as well as to the collection of the interest and penalties accrued for not having paid said taxes on time, which it shall do in the same way in which it collects the other taxes prescribed in this part.

With regards to the case at bar, Act No. 83, supra, in Article 5.01, subsections (e) and (g), 21 L.P.R.A. sec. 5151, provides as follows:

> The following assets shall be exempt from the payment of all personal and real property taxes:
>
> ...
>
> (e) The real and personal property belonging to and registered in the name of any nonprofit corporation, institution, partnership or entity organized under the laws of Puerto Rico dedicated to religious, charitable, scientific, literary, educational, and recreational purposes, among others, as well as commercial leagues, chambers of commerce, civic leagues or organizations, boards of proprietors, tenant associations, employee associations, and any other nonprofit organization in general, whose net properties and utilities do not benefit any shareholder or person in particular...
>
> (g) Real and personal property belonging to every nonprofit association organized under the laws of Puerto Rico for the purpose of selling prepaid programs or plans for medical and hospital services, provided it complies

> with the requirements of Act No. 142 of May 9, 1942, as amended. In case part of the property should not be occupied by the partnership for its nonprofit ends and purposes, or that part of the property should be leased and making a profit, the part of the property so used shall be subject to the levy and payment of taxes in the manner, within the term, and after compliance with the requirements provided by law. (emphasis ours)

Additionally, Article 7.02 of Act No. 83, supra, states as follows:

> The Governing Board of the Collection Center shall prescribe and promulgate the rules and regulations needed for the compliance, execution and proper interpretation of this part. It shall also prescribe any other regulations that become necessary for reason of any legal change with regard to property taxes. All rules, regulations, norms and directives previously issued by the Secretary of the Treasury to that effect, that are not in conflict with the provisions of this part shall continue in effect until the Governing Board of the Collection Center promulgates said regulations. See 21 L.P.R.A. sec. 5159 [sic: §5252]. (emphasis ours)

For its part, Article 7.03 of the legislation establishes that "[t]he acquired rights of the taxpayers under the prior legislation or any other special laws, will continue in effect so long as they are not in conflict with the provisions of this law."

-C-

Summary judgment is the procedural mechanism through which discretion is conferred on the court to issue a judgment about the totality of a claim or about any controversy included in the same, without the need to have a trial or evidentiary hearing. Rule 36 of the Rules of Civil Procedure, 32 L.P.R.A. Ap. III, R. 36; Nissen v. Genthaller, 172 D.P.R. ___ (2007), 2007 T.S.P.R. 197, 2007 J.T.S. 202. It is a reigning and indispensable criterion for summary judgment that there does not arise from the documents that accompany the petition or that are found in the court's file a legitimate controversy about material and essential facts of the case, therefore all that remains is to apply the law. Nissen v. Genthaller, supra; Perez Rosado v. El Vocero, 149 D.P.R. 427 (1999).

In Vera v. Bravo, 161 D.P.R. 308(2004), the Supreme Court was emphatic when indicating that summary judgment should not be issued when: (1) there exist contested essential and material facts; (2) it arises from the documents themselves that accompany the motion a real controversy about any essential and material fact; or, (3) it does not proceed as a matter of law. See also Nissen v. Genthaller, supra.

In sum, it is a reiterated norm that this procedural mechanism is a discretional remedy and that it should be used with restraint. When the court is completely convinced about the absence of controversy with respect to essential and material facts in the case and that the evidentiary hearing is unnecessary, only then should the court issue a

summary judgment. Even if no proof is presented that controverts that of the moving party, it does not necessarily mean that summary judgment should be declared. Nissen v. Genthaller, supra; Vera v. Bravo, supra.

Finally, about this topic, the Highest Forum has also held that in the cases in which there does not exist a clear certainty about the essential and material facts of the controversy, summary judgment does not lie. Sucn. Maldonado v. Sucn Maldonado, 166 D.P.R. ___ (2005), 2005 T.S.P.R. 166, 2005 J.T.S. 172. Were this not the case, the unrestricted use of the summary judgment mechanism would violate due process. Because summary judgment is an extraordinary remedy and its concession is left to the discretion of the court, "wise discernment is the reigning principle for its use because, wrongly used, it could lend itself to strip a litigant of its day in court, an elementary principle of due process of law." Nissen v. Genthaller, supra; E.L.A. v. Cole, 164 D.P.R. ___ (2005), 2005 T.S.P.R. 46, 2005 J.T.S. 55.

We shall now analyze the errors raised by the appellants in the appeals before us and to confront them with the applicable law, as discussed above.

In the brief of KLAN0701749, Triple S indicated that the Court of First Instance committed multiple errors when issuing its judgment. In sum, the allegations of Triple S are the following:

1. The Court of First Instance should have issued summary judgment in its favor, since the CRIM's claim was time barred;

and, to those effects, it should have allowed it to conduct discovery.

2. The Court of First Instance committed an error of law by resolving the case at bar pursuant to an erroneous interpretation of the applicable norms.

With regards to this aspect, Triple S argued that the statute that the Department of the Treasury utilized in order to grant it the tax exemption against personal property was Article 291(t) of the Political Code, supra, today substituted by Article 5.01 of Act No. 83, supra. It indicated that these two provisions cover specifically "associations with no pecuniary purposes which sell pre-paid medical services plans" -distinguishing them from what is a for-profit corporation.[5] It indicates, also, that the legislative history of Article 291(t), supra, "clearly reflects that this exemption for property tax was created to cover Triple S and other similar entities." It maintains that the appealed forum gave greater weight than it deserved to the opinion of the Secretary of Justice[6], as well as to

---

[5] As part of its argument Triple S indicated that the CRIM never contested the fact that it functioned in practice as an association with no pecuniary purposes with documents admissible in evidence. See Appellate Brief, KLRA200701749, p. 15.

[6] Through Opinion 03-09B of July 30, 2003, then-Secretary of Justice, Hon. Anabelle Rodríguez, addressed an opinion requested by then-Secretary of the Department of the Treasury, Juan A. Flores Galarza, about a controversy which arose regarding the final agreement signed by said department and

(Continued...)

the findings of the legislative investigations that were conducted.[7]

Triple S. In synthesis, the Secretary of Justice concluded that the assets of Triple S were of a private nature for which the Department of the Treasury could impute on it the dividend as payment for income taxes. It indicated that the incorporation of Triple S was done as a for-profit corporate entity and that its retained earnings were always available for the distribution of dividends. It indicated, also, that the administrative determinations of the Secretary of the Treasury do not amend the articles of incorporation subscribed by juridical entities; these are amendable only by the formal procedures established in the corporate act.

[7] The Commission on Governmental Integrity and the Commission on Health and Environmental Affairs of the Senate of Puerto Rico, as well as the Commission on Banking, Insurance and Financial Affairs of the House of Representatives conducted investigations about the tax exemption granted to Triple S by the Department of the Treasury. See Appendix of the Appeal KLAN200701749, pp. 103-111 and 124-156.

As part of the Conclusions and Recommendations of the Final Report of the Senate investigation, R. of the S. 2096, it was concluded that:

...

2. There does not exist a legal system which allows for a for-profit entity to be treated as one that is not-for-profit. Only the decisions of the Department of the Treasury in 1976, 1979 and 1998 allowed this privilege to the insurer that always was and has been a company with lucrative purposes. No for-profit health insurer in the country enjoys tax exemption under Section 1001(6) of the Internal Revenue Code. . .

3. ... "Triple S has accumulated earnings of approximately $132,000,000.00 from 1976 to 2002, that is to say since it has enjoyed the tax exemption, and for this year 2003, the company estimates that its earnings will be

(Continued...)

$40,000,999.00 for a total of accumulated earnings of $172,000,000.00, up until the end of this tax year. If the Department of the Treasury accepts the recommendation to end the tax exemption the recovery of those earnings could proceed. In such case, Triple S would pay all taxes that it did not pay while enjoying the same, as if it had not benefited from the tax exemption and subject to the application of the highest tax bracket allowed by law which is 39%.

...

5. The Office of the Insurance Commissioner believes that compliance with this tax obligation does not put the company at economic risk. . .

...

7. The Commission on Governmental Integrity recommends, that Triple S stop receiving the benefit of tax exemption and that it pay all of the taxes that should have been paid. There exists consensus between the Department of the Treasury, Department of Justice and the Office of the Insurance Commissioner that this is a fair and correct course of action.

For its part in the Final Report of the House of Representatives, R. of the C. 4490, of August 1, 2003, as part of the Conclusions and Recommendations, it was established that:

1. It is not justified that Triple S receive this benefit of being exempt from taxes as a not-for-profit company while being organized for profit and without the existence of any legal system that allows it.

2. No for-profit health insurer in the country enjoys tax exemption under Section 1101(6) of the Internal Revenue Code.

3. ...

4.

5. Triple S has accumulated earnings of approximately $132,000,000.00 from 1976 to 2002, that is to say since

(Continued...)

3. The appealed forum was obligated to give deference to the administrative determinations of the Department of the Treasury, and of the CRIM, to grant a tax exemption to a corporation that was functioning as an "association with no pecuniary purposes." It indicates that, in conformity with what was resolved in Avon Products Inc. v. Srio. del Trabajo, supra, "even though an agency can revoke an administrative determination to a person, the revocation can only have prospective effect when the person has relied on the determination in the exercise of its business."

4. The CRIM affected its property right in an arbitrary, unreasonable and capricious manner. Triple S indicates that the tax

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it has enjoyed the tax exemption, and for this tax year 2003, the company estimates that its earnings will be $40,000,999.00 for a total of accumulated earnings of $172,000,000.00, up until the end of this tax year.

...

9. The Secretary of Justice, Hon. Anabelle Rodríguez, has issued a legal opinion in which she concludes that the Secretary of the Treasury can require the payment of said tax, since the retained earnings accumulated by Triple S while it had tax exemption are private assets of Triple S and are not charitable or public assets and, as a result, Triple S could validly declare a dividend to Triple S Management against said retained earnings.

10. The Commission reiterates its recommendation, that Triple S discontinue receiving the tax exemption benefit and pay all the taxes that should have been paid.

levy that was imposed on it by the CRIM: (1) is unconstitutional, for having been notified 15 years later; (2) it has the effect of committing a great injustice against it in the tax area; and, (3) it affects the rights that it had acquired through the affirmative and irrevocable actions of the Department of the Treasury as well as of the CRIM. Triple S also indicates that it never could have foreseen that the amounts which were exonerated from tax would be collected retroactively, and that, pursuant to what is established in Circular Letter 86-3[8] of the Department of

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[8] In what is pertinent to this appeal, the Circular Letter 86-3 issued by the Department of the Treasury on April 21, 1986 provides the following:

> It is the practice of the Puerto Rico Department of the Treasury (hereinafter, the "Department") to answer inquiries of taxpayers and other interested parties, whenever appropriate in the interest of sound tax administration, as to the tax effects of their acts or transactions. This Circular Letter establishes the general procedure to be followed for the issuance of formal responses to those inquiries.
>
> Rulings and Administrative Determination Letters
>
> A ruling or written statement interpreting and applying the tax laws to a specific set of facts will be issued to a taxpayer or his authorized representative. If the issue covered by the ruling is understood by the Department to be of general interest, the ruling will be also issued as an administrative letter for public release.
>
> Rulings and administrative determination letters are official interpretations by the Department as to
>
> (Continued...)

the application of the tax laws on the acts or transactions represented by the taxpayer. They are issued only by the Secretary or by the person upon whom he may delegate.

. . .

A ruling issued by this Department will generally be binding on the Department as long as the representations upon which the ruling was based reflect an accurate statement of the material facts with respect thereto and the transaction was carried out as proposed.

A taxpayer may not rely on a ruling issued to another taxpayer.

A ruling or administrative determination found either to have been issued in error or not in accord with the current views or policies of the Department may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling was issued or by publication of an administrative determination, circular letter or other publicized form. **Except in rare or unusual circumstances, the revocation or modification of a ruling or administrative determination will not be applied retroactively** with respect to the taxpayer to whom the ruling was originally issued or to an interested party whose tax liability was directly involved in that ruling, or to the taxpayer who can demonstrate that the transaction entered into was done upon reliance of the administrative determination, if:

1. The ruling or administrative determination was originally issued with respect to the transaction undertaken.

2. The facts of the transaction are not materially different from the facts on which the rulings or administrative determination was based.

(Continued...)

the Treasury, the revocations had to be made prospectively.

5. The retroactive revocation of the exemption by the CRIM should be considered an impairment of contractual obligations between it and the Department of the Treasury. It also indicates that the action of the Court of First Instance of validating the revocation of the CRIM constitutes a clear abuse of discretion.

For its part the CRIM replied to all the allegations of Triple S. In synthesis it indicated that:

1. During the course of the action both parties engaged in extensive discovery, which included interrogatories, requests for admissions and depositions, so that the petition of Triple S to have additional discovery about the issue of time bar was not justified.

The CRIM indicated that, in conformity with Article 3.22 of Act No. 83, supra, it has the duty to appraise and collect the corresponding taxes for a

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3. There has been no change in the applicable law.

4. The taxpayer acted in good faith in reliance upon the ruling or administrative determination and the retroactive revocation or modification would be to his detriment.

In the event of a change in applicable law or regulations, if the above other three conditions are met, the revocation will be applicable from the date that the change takes place.

property that has been omitted from appraisal of the property of any taxpayer, like in the case of Triple S.

2. The entities" that are not organized for profit" under Section 1101(6), supra, and those "organized without profit-making purposes under the laws of Puerto Rico" from Article 5.01 of Act No. 83, supra, refer to the same. It indicates that under the laws of Puerto Rico it is an indispensable requirement that an entity be organized as a not-for-profit in order to enjoy the tax benefit offered by Article 5.01 of Act No. 83, supra, previously Article 291(t) of the Political Code, supra,

3. The administrative determination of the Department of the Treasury to grant tax exemption for the property of Triple S is null because it is contrary to the clear and unequivocal language of the law. The benefit of the tax exemption was designed for the "exclusive use of entities that have been organized without lucrative purposes, or what is the same thing, with non-pecuniary purposes."

4. With regards to the application of Avon Products v. Srio. de Trabajo, supra, the CRIM maintains that there is a substantial difference between that case and the facts of the case at bar. It indicates that the cited case refers to an administrative determination based on a statute that had been the victim of an interpretative transformation by the courts during a course of years. In

contrast, it indicates that the statute used by the Department of the Treasury to grant property tax exemption to Triple S is of exclusive application to not-for-profit entities.

The CRIM also argues that in Avon Products v. Srio. del Trabajo, supra, the judgment of the Supreme Court of Puerto Rico about the prospective effect of its interpretation of the law there in controversy,[9] was specific to the provisions of said law. It indicates that the limited expressions of the High Forum in that case cannot be considered to have general application to all other fiscal laws.

5. With regards to the alleged violation of due process of law, the CRIM indicates that Triple S had available to it an administrative forum as well as, now, the judicial forum to challenge its determination. With regards to the violation of the protection of contractual obligations, the CRIM maintains that "an *ultra vires* administrative act lacks any basis upon which to claim a constitutional protection." An error incurred by an administrative organism does not create any right, nor does it obligate it, nor impede its correction. Del Rey v. J.A.C.L., 107 D.P.R. 348 (1978).

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[9] The Security in Employment Act of Puerto Rico, 29 L.P.R.A. sec. 702(K), (5) (A) (B) (C).

6. Lastly, the CRIM indicates that the doctrine of undue collection does not apply to the present case, because in this case Triple S has not made any payment, an indispensable requirement for the application of the referred doctrine.

With regards to appeal KLAN200800249, in general terms, Triple S raises the same arguments as those presented in appeal KLAN200701749, discussed above.

Of this second appeal KLAN200800249 — which concerns the challenge of the personal property tax levy — it only remains to underscore the aspect of the prescription issue raised by Triple S. In its brief, the insurer states that in conformity with what is established in Article 6.18 of Act No. 83, 21 L.P.R.A. sec. 5218, the taxes over personal property were fatally time barred.

Having summarized the allegations of the parties, and since the arguments they presented in the appeals of caption are similar, we resolve the same in a joint manner.

-i-

We should begin by underscoring the legal provisions under which the Department of the Treasury as well as the CRIM granted Triple S tax exemptions over personal and real property. Let's see.

Section 101(8) of the Income Tax Act of 1954, supra, under which the Department of the Treasury granted to Triple S in 1976 the tax exemption over property, provided as follows:

> The following organizations shall be exempt from taxation under this part-
>
> . . .
>
> (8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees whose membership is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.[10] (emphasis ours)

Article 291(t) of the Political Code of Puerto Rico, supra, under which the Department of the Treasury ratified the tax exemption granted to Triple S, established the following:

> Real and personal property belonging to every nonprofit association organized under the laws of Puerto Rico for the purpose of selling prepaid programs or plans for medical and hospital services, provided it complies with the requirements of secs. 41 to 55 of Title 6; In case part of the property should not be occupied by the partnership for its nonprofit ends and purposes, or that part of the property should be leased and making a profit, whether to the lessor or

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[10] This provision is currently codified in Section 1101(6) of the Internal Revenue Code of 1994.

> lessee, the part of the property so used shall be subject to the levy and payment of taxes in the manner, within the term and after compliance with the requirements provided by law. (emphasis ours)

Section 1101(6) of the Internal Revenue Code of 1994, supra, under which the Department of the Treasury ratified the tax exemption granted to Triple S in 1998, provided the following:

> Except as provided in Subchapter 0, the following organizations shall be exempt from taxation under this Part:
>
> (6) Civic leagues or organizations not organized for profit but operated exclusively promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

These provisions establish as a fundamental requirement for the concession of tax exemption to organizations that **they not be organized for profit.** We do not have the slightest doubt that Triple S did not comply with said requirement. Triple S was incorporated in 1959 — then as Seguros de Salud de Puerto Rico, Inc. — as a for-profit corporation and insurer under the provisions of Act No. 3, supra.

Notwithstanding, in 1976 the Department of the Treasury, through an administrative determination, granted Triple S a tax exemption, which was reiterated in the years 1987 and 1998. In this last year, the tax exemption was also ratified by the CRIM.

However, beginning in 2003, the Department of the Treasury notified Triple S of its intention to discontinue the mentioned administrative determination. The CRIM did the same through a notification sent to Triple S on February 1, 2006, and followed with the retroactive recovery of the debt.

First of all, we should point out that in conformity with what is established in Article 7.03 of Act No. 83, supra, the CRIM was obligated to observe the effectiveness of all the norms, regulations, and directives issued by the Secretary of the Treasury, so long as they are not in conflict with its enabling act. This suggests that should there be a provision in Act No. 83, supra, to which said rule, regulation, norm or directive issued in the past by the Department of the Treasury is contrary, the CRIM could revoke it and would not be obligated to accept it — which is what occurs in the present case.

After analyzing the previously cited legal provisions, pursuant to which the Department of the Treasury granted the tax exemption to Triple S, it must be concluded that the same are in conflict with Act No. 83, supra. Let us see.

Article 5.01, in its subsections (e) and (g), of Act No. 83, supra, provides expressly that the benefit of tax exemption is exclusively for entities

incorporated as not-for-profits. This was also established in the same manner by Section 1101(8) of the Income Tax Act of 1954, supra; by Article 291(t) of the Political Code, supra; and, by Section 1101(6) of the Internal Revenue Code of 1994, supra.

There is no doubt that the provisions pursuant to which Triple S was granted the tax exemptions from 1976 to 2003 did not allow the concession of such benefits to for-profit entities. Therefore, it must be concluded that the tax exemption granted to Triple S by the Department of the Treasury is in clear conflict with what is provided in the cited provisions, and the CRIM was not obligated, as Triple S claims, to give deference to the same.

Faced with this situation, the CRIM could revoke the emitted administrative determination for being in conflict with the provisions of Act No. 83, supra.

We also underscore the conclusions of the Opinion issued by the Secretary of Justice in 2003[11]

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[11] Even though the opinions of the Secretary of Justice do not obligate the courts in any way and, therefore, we are at liberty to take the decision which lies as a matter of law, the truth is that if they propose a correct and reasonable interpretation of the question in controversy, there is no reason to reject them. In fact, the Supreme Court with some frequency makes use of the persuasive value of the Opinions of the Secretary of Justice to adjudicated cases and controversies. P.P.D. v. Gobernador I, 139 D.P.R. 643, 687 n. 23 (1995); Col. Int'l SEK P.R., Inc. v. Escriba, 135 D.P.R. 647, 663 n. 19 (1994); Alcalde de San Juan v. Asamblea Municipal, 132 D.P.R. 820, 827 (1993); Aut. de

(Continued...)

as well as those of the legislative investigations. In both instances it was concluded, in synthesis, that there was no juridical provision which allowed a for-profit entity to be considered as one that is not-for-profit. Specifically, the then-Secretary of Justice indicated that the determinations issued by the Secretary of the Treasury do not have the effect of amending the articles of incorporation signed by juridical entities, since they could only be amended by the formal procedures established in the Corporate Act.[12]

Since the administrative determinations issued by the Department of the Treasury were null, the CRIM could validly revoke the same and demand the payment of the taxes not paid by Triple S. Incidentally, the Department of the Treasury agreed with Triple S on a global payment of $37,000,000 attributable to the periods of effectiveness of the exemption, which, evidently signified the recovery of the income tax that the insurer did not pay when benefiting from the exemption granted to those effects.

Our Highest Forum established in the case of Franco v. Municipio de Cidra, 113 D.P.R. 260, 262 (1982), that it cannot ratify the theory that [administrative] inaction or illegality could be the source of recognizing rights where there are not any if they are born from a violation of the law.

Puertos v. Mun. de San Juan, 123 D.P.R. 492, 10 n.6 (1989).

[12] The Corporate Act applicable to the facts of this case was the repealed Act No. 3, supra.

After all, *ultra vires* acts by public officials do not create rights, do not obligate the administrative organism, nor do they impede it from effectuating a correction. Id.; Del Rey v. JACL, 107 D.P.R. 348, 355 (1978). See also Camacho v. AAFET, 168 D.P.R. ____ (2006), 2006 T.S.P.R. 88, 2006 J.T.S. 97; Gonzalez v. E.L.A., 167 D.P.R. ____ (2006), 2006 T.S.P.R. 44, 2006 J.T.S. 53.

Certainly from the conducted analysis it follows in a crystalline manner that the Department of the Treasury acted in an illegal manner by granting Triple S, a corporation organized with lucrative purposes, a tax exemption over its personal as well as over its real property. Said action was an *ultra vires* one, for which it did not generate any right, does not obligate the CRIM, nor does it impede it from effectuating its correction.

Having said the above, we conclude that the appealed forum did not commit an error in law when issuing its judgment. Triple S is not correct in arguing that the norms of law applied to the case by the Court of First Instance were not the correct ones.

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Additionally, since the CRIM is not obligated to honor the administrative determinations of the Department of the Treasury which are contrary to the clear language of the law, it follows that the revocation of the same has a retroactive effect.

The norm established in the case of Avon Products, Inc. v. Srio. del Trabaio, supra, does not apply to the present case, since, as the CRIM

argues in its briefs, the action of the Department of the Treasury is null and did not confer any right to Triple S. As we have established previously, the statutes that impose the payment of taxes have to be interpreted restrictively. See BBC Realty v. Secretario, supra.

In conformity with the above mentioned norm, and pursuant to what is established in Article 3.22 of Act No. 83, supra, when the CRIM has knowledge that any property has been omitted from the appraisal of a taxpayer, "it shall be its duty to cause to be appraised immediately for the years during which said property has not been appraised and add it to the list of taxes for said years, proceeding to the collection of the taxes that correspond to it." Faced with the clarity and lack of ambiguity of this provision, it does not follow to apply to the present case what is established in Avon Products v. Srio. del Trabajo, supra, nor the norm against retroactivity established in Circular Letter 86-3, previously cited.

-iii-

We should also analyze the aspect of the time bar for the collection of taxes against personal property as argued by Triple S. The insurer argues that, in conformity with what is established in Article 6.18 of Act No. 83, 21 L.P.R.A. sec. 5218, the taxes over personal property are fatally time barred. They are not correct.

The above-mentioned Article 6.18, supra, establishes in pertinent part, that the CRIM "will have a term of four (4) years to conduct a review of the personal property tax form, the appraisal of the properties, the calculation of the tax made by

the taxpayer and to determine the correct contribution to be paid, counted from the day the taxpayer filed their form...." This provision refers to the review process of the tax forms, totally inapplicable to the case at bar, in which the taxpayer is notified about the deficiencies of the same.

As the CRIM alleges, the controversy in the present case involves the collection of taxes that were considered exempt in violation of what is established in the law. During the years of 1991 to 2002, the personal property tax forms of Triple S were filed as exempt from the payment of taxes by virtue of the *ultra vires* administrative determinations of the Department of the Treasury. In the present case, a revision of the computation or valuation of the filed tax forms was not conducted; rather it was demanded from Triple S the payment for the same based on the determination that the action of the Department of the Treasury was a nullity.

-iv-

Lastly, in the present cases under our consideration, it followed that a summary judgment be issued, since from the documents that accompany the petitions presented there did not raise any legitimate controversy of material and essential facts, leaving only the application of the law, which the appealed forum did correctly. See Nissen v. Genthaller, supra; Perez Rosado v. El Vocero, supra. It follows that the appealed judgments be confirmed.

For the aforementioned reasons, the appealed judgments are confirmed.

So held and the Court orders, and the Clerk of the Appeals Court certifies.

[ink stamp:
(signature)
MRS. MILDRED IVONNE RODRIGUEZ RIVERA
Deputy Clerk of the Court of Appeals]

Mariá Elena Pérez Ortiz

Clerk of the Court Appeals

Appendix B

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

TRIPLE S MANAGEMENT CORP.	CASE: K C02006-009 ROOM: 0901
PLAINTIFF	
VS.	
MUNICIPAL REVENUE COLLECTION CENTER	TAXES CHALLENGE/ DEFICIENCY L91 29654 TAX ON GROUNDS/OFFENSE

ATTY QUIÑONES RODRÍGUEZ SIXTO
LAW OFFICES PEDRO E ORTIZ
PO BOX 9009
PONCE PR
00732-9009

NOTIFICATION OF JUDGMENT

THE UNDERSIGNED CLERK NOTIFIES YOU THAT THIS COURT HAS ISSUED A JUDGMENT IN THE CAPTIONED CASE DATED OCTOBER 29, 2007, WHICH HAS BEEN DULY REGISTERED AND FILED IN THE RECORDS OF THIS CASE, WHEREIN YOU MAY LEARN IN DETAIL THE TERMS OF THE SAME.

AND, SINCE YOU ARE OR REPRESENT THE PARTY PREJUDICED BY THE JUDGMENT, OF WHICH AN APPEAL CAN BE

Appendix B

TAKEN, I ADDRESS THIS NOTIFICATION TO YOU, HAVING FILED IN THE RECORDS OF THIS CASE A COPY OF THE SAME DATED OCTOBER 30, 2007 .

ORTIZ PIETRI EDWIN [ATTY]
PO BOX 195387-
SAN JUAN PR 00919-5387

MUNICIPAL REVENUE COLLECTION CENTER
PO BOX 195387
SAN JUAN PR 00919-5387

TRIPLE S INC
PO BOX 363628-
SAN JUAN PR 00936

SAN JUAN , PUERTO RICO
ON OCTOBER 30, OF 2007

ATTY. REBECCA RIVERA TORRES

CLERK [illegible handwriting]

BY: LINDA M. LEVY RODRÍGUEZ

ASSISTANT CLERK

Appendix B

O.A.T. 704-NOTIFICATION OF JUDGMENT

TELETRIBUNALES: (787) 759-1888/ISLAND,
FREE OF CHARGE (787) 1-877-759-1888

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix B

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

TRIPLE-S MANAGEMENT, CORP. AND TRIPLE-S, INC. Plaintiffs	CIVIL NUM: K C02006-0029 (901) RE:
CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES [Municipal Revenue Collection Center] Defendant	CHALLENGE TO LEVY OF TAXES OVER REAL PROPERTY

JUDGMENT

On March 28, 2006 Triple-S Management, Inc. and Triple-S, Inc., (hereinafter, Triple-S) presented the complaint before us challenging the revocation of the tax exemption by the Municipal Revenue Collection Center (hereinafter, CRIM) with respect to its real property for years 1992-1993 up until 1999-2000. It indicated in its complaint that the CRIM, as the successor agency of the Department of the Treasury (hereinafter, Treasury), for the collection of said taxes is bound to observe the administrative determination conferred by the Treasury on June 12, 1987 and through which it conceded tax exemption to the insurer. It also claimed, that since the CRIM has

yet to revoke or supplant the Circular Letter 99-1, it should act, insofar as is pertinent, as provided therein. In other words, that the CRIM, by revoking the determination of tax exemption over the real property of Triple-S, had the duty to impose the same in a prospective manner as stated in the letter.

The CRIM answered the complaint with the allegation that the administrative determination of the Treasury that granted the tax exemption to Triple-S over the payment of taxes was null for being contrary to the letter of the law and, therefore, it never generated any right in its favor. It indicated that the provision of law under which said agency granted the tax exemption is of exclusive application to entities organized as not-for-profit corporations and, faced with the fact that Triple-S was incorporated as a for-profit entity, said determination never should have applied to it. Based on this analysis, it asserted that the Circular Letter 99-1 also did not apply. It concluded that the Final Agreement between the Treasury and Triple-S through which they agreed upon the assignment of a dividend attributable to accumulated earnings and the collection of the corresponding tax had the underlying effect of amending the mistake committed by the Treasury in its prior administrative determinations.

Both parties stipulated to the nonexistence of any controversy regarding the facts of this case and agreed to the presentation of motions for summary judgment. In essence, Triple-S claimed that the action of the Secretary of the Treasury was within

the bounds of his discretion for which the tax exemption granted by the Department of the Treasury gave a vested right that, according to Article 7.03 of the Act No. 83 of August 30, 1991, as amended and known as Municipal Property Tax Act of 1991, the CRIM had to accept. Likewise, the CRIM was bound to comply, as set forth in Article 7.02 of the cited law, with the provisions of Circular Letter 99-1 regarding the prospective effect of the revocation of an administrative determination, given that its Board of Directors has not promulgated a rule, regulation, norm or directive that repeals or alters what is indicated therein.

The CRIM, for its part, has repeatedly sustained that the administrative determination promulgated by the Treasury and reiterated by the CRIM itself is null for being contrary to the clear language of the law. Since said determination is the result of an ultra vires act of the Treasury, it is impossible for Triple-S to be able to claim the acquisition of any right as a result of the same.

In light of the above-mentioned procedural summary, this Court proceeds to formulate the following:

I.

Determinations of Uncontested Facts

With the purpose of providing pre-paid medical-hospital service plans, a group of health professionals organized in 1959 the entity Seguros de Servicios de Salud, Inc. The insurer entity, commonly called Triple-S, was incorporated as a for-

profit corporation, according to the provisions of Act No. 3 of January 9, 1956, known as General Law of Corporations and the Insurance Code of Puerto Rico. Even though up to the present said corporate status has continued unaltered, since 1979 Triple-S began to benefit from an administrative determination of the Department of Treasury which granted it an exemption for the payment of income taxes. Since its creation, and up until said year, the insurer was subject to the payment of taxes to the state against its income and property. Nevertheless, this determination allowed Triple-S to receive a tax treatment similar to the one provided in section 101(8) of the Income Tax Law of 1954, as amended, reserved for the concession of tax exemptions to "leagues or civic organizations that are not organized for purposes of profit but rather that function exclusively for the promotion of social well-being . . .", 13 LPRA § 8501. Today this provision is incorporated in section 1101(6) of the Internal Revenue Code of 1994.

Originally, the Treasury issued its administrative determination on July 16, 1976, in which it would grant Triple-S the exemption requested on July 9, 1971, so long as the insurer comply with the approval of amendments to the bylaws of the corporation in order to reflect, among other requirements, that the corporation operate as a league or organization exclusively for the promotion of social well-being with no profit-making purpose whatsoever. On March 8, 1979, however, Triple-S informed the Treasury that due to technical and legal reasons it was not feasible for them to amend

its bylaws in the way contemplated in said administrative determination.

Finally, on June 28, 1979, the Treasury amended its determination and agreed to the insurer's petition, allowing it to not have to amend its bylaws and requiring from its Board of Directors and Board of Shareholders, only the approval of a resolution to the effect of reiterating their commitment to comply with the requirements originally established via the amendments to the bylaws of the corporation. This concession was ratified on November 21, 1984.

On June 12, 1987, the Treasury extended, pursuant to Art. 291(t) of the Political Code, 13 L.P.R.A. § 551(t)[1], the benefit of exemption from the payment of taxes against Triple-S's personal and real property. This benefit was subsequently ratified on December 15, 1998, by the CRIM, governmental agency created in 1991 with the purpose of collecting, receiving and distributing to the municipalities public funds which come from property taxes.

In 1998, Triple-S culminated the process of a corporate reorganization that gave way to the creation of Triple-S, Inc., and Triple-S Management Corp., plaintiff parties in this case. On November 6 of said year, and after considering said

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[1] Current Art. 5.01 (g) of Law 83, 21 L.P.R.A. § 5151, which provides in pertinent part: "It shall be exempt from the levying of tax personal and real property that belong to any association with no pecuniary purposes. . . ." (emphasis ours).

reorganization, the Treasury ratified its tax determination for the last time.

The tax exemption of Triple-S, however, came to an end July 31, 2003, with the notification by the Department of the Treasury about a change in its public policy that would limit the interpretation of Sec. 1101(6) of the Internal Revenue Code to its literal language. It indicated that its application would be destined exclusively to entities organized and incorporated as not-for-profit entities.

The Treasury issued its revocation pursuant to the parameters provided in the Circular Letter 91-1. This Circular Letter authorizes the revocation of previous determinations issued by the Treasury as result of changes in its public policy and suggests that the change, as a general rule, should take effect in a prospective manner. It is fundamental to underscore that even though the Treasury gave notice of its revocation with a prospective nature, it ensured for itself, however, the immediate collection of $37,000,000.00 by agreeing with Triple-S in the Final Agreement on the assignment of a dividend for an amount equal to the retained earnings accumulated by Triple-S as of December 31, 2002, and attributable to the periods during which the exemption was in effect. The insurer also had to comply with the disbursement of an additional $14,773,839.00 corresponding to the retained earnings accumulated as of December 2003. Nothing was indicated in said Agreement regarding the payment of property tax, personal and real, of Triple-

S and the CRIM had no participation in said negotiation.

In a letter addressed on March 3, 2006, to the management of the appearing plaintiff entities, the CRIM gave notice to Triple-S of the revocation of its administrative determination emitted to 1998 and informed that its tax responsibility related to its real property would be backdated to fiscal year 1993. In its communication, the CRIM demanded the payment of $1,326,024.52.

The CRIM indicated to Triple-S that its compliance with the conditions imposed by the Treasury did not have the effect of converting it into a not-for-profit entity. It added that since the provision used by the Treasury to grant the exemption originally is by character exclusively for not-for-profit entities, prior determinations of the Treasury as well as that of the CRIM itself granting the tax exemption were erroneous, null and incapable of generating any right in favor of the insurer.

II.

The Summary Judgment

Rule 36 of the Rules of Civil Procedure, 32 L.P.R.A. Ap. III, R. 36, authorizes the court to issue summary judgment in those cases in which there is no controversy over the facts of the same; only with regards to the law that should be applied.

In Bias v. Secretario de Hacienda, 2006 TSPR 85, 168 DPR ___, our Supreme Court indicated:

Appendix B

As it is known, summary judgment is an extraordinary and discretional procedural mechanism that has as its purpose to facilitate a quick and fair solution of lawsuits and civil cases that do not present genuine issues of material facts. E.L.A. v. Cole Vasquez, decided April 13, 2005, 2005 TSPR 46. Said mechanism is expressly regulated by Rule 36 of Civil Procedure, 32 LPRA. Ap. III, declared when, from the allegations, depositions, answers to interrogatories and admissions offered together with sworn statements, there does not exist a real controversy over the material and essential facts of the case in question. For this reason, when there exists the most minimum doubt or controversy about material or essential facts of the case, the court shall deny the summary judgment and should celebrate a hearing on the merits. Lopez Colon v. Hon. Miranda Marin, decided December 16, 2005, 2005 TSPR 197; Sucn. De Gregorio Maldonado Ortiz v. Sucn. De Francisco Maldonado Hernandez, decided November 9, 2005, 2005 TSPR 166; E.L.A. v. Cole Vazquez, 2005 TSPR 46.

Based on this, we have reiterated that when considering a motion for summary judgment the primary forum will accept as true the uncontested facts that appear in the documents and the sworn statements presented by the moving party. Lopez Colon

v. Hon. Miranda Marin, 2005 TSPR 197; Piriero Gonzalez v. A.A.A., 146 DPR 890 (1988). In this way, when from the accompanying uncontested documents it arises that there does exist a legitimate dispute of fact to be determined, all that is left is to apply the law and that the interests of the parties are not put in danger, judgment shall be rendered without the need to hold a hearing on the merits. Lopez Colon v. Hon. Miranda Marin, 2005 TSPR 197; Audiovisual Lang. v. Est. Natal, 144 DPR 563 (1997). Of course, taking into consideration that the summary judgment is a remedy of discretional nature, "the wise discernment is the reigning principle for its use because, wrongly used, it could lend itself to strip a litigant of 'its day in court', elementary principle of the due process of law." Management Administration Services Corporation v. Estado Libre Asociado de Puerto Rico, 152 DPR 599, 611 (2000); Cordova v. Larin, 151 DPR 192 (2000); Rolq Com. Bank v. Rosario Cirino, 126 DPR 613, 617 (1990).

For this reason, the trial court, when rendering a summary judgment: (1) will analyze the documents that accompany the motion requesting summary judgment and the documents included with the motion in opposition and those which are in the file with the court; and (2) will determine whether the opposing party contested any

> material fact or if there are allegations of the complaint that have not been contested or refuted in any way by the documents. Management Administration Services Corporation v. Estado Libre Asociado de Puerto Rico, 152 DPR 599 (2000), to page 611; PFZ Props., Inc. v. Gen. Acc. Ins. Co., 136 DPR 881 (1994)."

There existing no real controversy over the essential facts of the present case, we proceed to apply the law to the same.

III.

Applicable Law

The sec. 1101(6) of the Internal Revenue code of 1994, as amended, 13 L.P.R.A. § 8501, used by the Treasury as a basis for its administrative determination for granting tax exemption to Triple-S, reads in pertinent part as follows:

> "Except as provided in sec. 8690 to 8697 of this title, the following organizations shall be exempt from taxation under this Part: (1)...
>
> (6) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

Appendix B

Subsection 6 establishes two requirements that every organization should observe in order to be meritorious of the exemption therein provided: (1) not be organized for purposes of profit and (2) dedicate its net earnings in an exclusive manner to charitable, educational, or recreational purposes.

Regarding the requirement of not being organized for profit, Triple-S indicates that since the Insurance Code of Puerto Rico did not contemplate the creation of a nonprofit stock insurer, it was forced to resort to provisions associated with for profit organizations that also afforded it the opportunity to organize itself with the celerity and flexibility necessary to be operational. However, as a response to the interest of its incorporators to operate according to the provisions corresponding to a non-profit and to the dilemma faced in the Code, they voluntarily renounced to earn dividends of any kind. Regarding the second subsection which requires the dedication of its net earnings exclusively to charitable, educational or recreational purposes, Triple-S points us to its alleged compliance of the conditions established by the Treasury.

Triple-S concludes that the Treasury had the authority to grant a for profit corporation the benefit of tax exemption provided in the cited section exclusively for not-for-profit corporations. Likewise, it had the ability to establish requirements that substitute

Understanding that the Treasury acted in accordance with the law, it believed that the CRIM violated its due process of law by not honoring the

right it had acquired through the administrative determinations of the Department of the Treasury and imposing on it the payment of retroactive taxes. It added that the CRIM, as Hacienda, was obligated to revoke the administrative determination that granted tax exemption against its personal and real property in a prospective manner only. Triple-S is not correct.

We have no doubt that the CRIM is obliged to honor the administrative determinations still current that have been conceded by the Department of the Treasury with regard to taxes against personal and real property. In fact, Art. 7.03 of Act No. 83, cited above, clarifies any confusion by indicating: "The rights acquired by the taxpayers under the prior legislation or any other special laws shall continue in effect as long as they are not in conflict with the provisions of this law." Likewise, the CRIM is obligated to observe, insofar as its Board of Directors does not promulgate regulations to the contrary, the effectiveness of all the rules, regulations, norms and directives that have been emitted by the Secretary of the Treasury previously that are not in conflict with provisions of Law 83. See Art. 7.02.

However, both precepts bind the CRIM as long as the rules, regulations, norms and directives are not in conflict with Law 83. Therefore, should a provision of Law 83 be found to be in conflict with said rule, regulations, norm or directive issued in the past by the Department of the Treasury, the CRIM would be authorized to revoke it and it would not be compelled to comply with said determination.

In this sense, we direct our attention to subsection (e) of Art. 5.01 of Act No. 83, 21 L.P.R.A. § 5151, which provides:

> The following assets shall be exempt from the payment of all personal and real property taxes:
>
> (a) . . .
>
> (e) The real and personal property belonging to and registered in the name of any **nonprofit** corporation, institution, partnership or entity organized under the laws of Puerto Rico, dedicated to religious, among others, as well as commercial leagues, chambers of commerce, civic leagues or organizations, boards of proprietors, tenant associations, employee associations, and any other **nonprofit organization** in general, whose net properties and utilities do not benefit any shareholder or person in particular.

In similar vein, Art. 5.01(g) of Law 83, 21 L.P.R.A. § 5151 (g), *supra*, provides that the personal and real property that belongs to any association with non-pecuniary purposes organized under the laws of Puerto Rico shall be exempt from the levy of tax . . . (emphasis our).

Firstly, Law 83 provides the benefit of tax exemption for corporations. However, as with Sec. 1101(6) from the Internal Revenue Code, the same is for the **exclusive** benefit of entities incorporated with non-profit making purposes. Therefore, we are compelled to conclude that the administrative

determination granted to Triple-S by the Department of the Treasury is in clear conflict with what is provided in subsections (3) and (g) of Art. 5.01 of Law 83. This by itself provided the CRIM the authority to consider it null, for being in conflict with Law 83.

Incidentally, the conclusion of both legislative bodies reached further by finalizing their investigations surrounding the tax exemption granted to Triple-S. In its Final Reports, the Commissions for Governmental Integrity and of Health and Environmental Affairs of the Senate, as well as the Commission of Banking, Insurances and Financial Affairs of the House of Representatives, concluded that there does exist any legal provision that authorizes a for-profit corporation to receive benefits available only to non-profit entities. Furthermore, they equally understood, that the payment effectuated after the Final Agreement between Triple-S and the Department of the Treasury represented the recovery of all taxes that the insurer did not pay while it enjoyed the exemption.

Secondly, our Highest Forum has reiterated on multiple occasions that the administrative determinations contrary to the clear language of any legal statute do not concede any right to he who expected to benefit from the determination. Recently, in Jose G. Camacho Torres v. Administracion Para el Adiestrameiento de Futuros Empresarios v. Trabajadores, 2006 T.S.P.R. 88, 168 DPR ___, the Court was faced with the claim of Mr.

Camacho, who alleged that the agency separated him illegally from a career position that had been granted to him by the prior administration and for which he had a right to reinstallation after occupying a trust position. The new administration determined that the same had been conferred to him in an illegal manner. In its opinion, the Supreme Court expressed: "As we already concluded, he was occupying said position illegally since he didn't have a right to reinstallation. We cannot ratify the theory that the illegal action of the agency in reinstalling Camacho Torres to a career position when he didn't have a right to it, can give rise to the recognition of rights where there aren't any. Colon v. Alcalde Mun. de Ceiba, 112 DPR 740 (1982); Delgado Rivera v. Alcade de Carolina, 109 DPR 5, 11 (1979). After all, *ultra vires* acts by public officials do not create rights, do not bind the administrative organism, do not bar it from making correction. Franco v. Municipio de Ceiba, 113 DPR 260, 262 (1982); Del Rev v. JACI, 107 DPR 348, 355 (1978). See also Gonzalez Fuentas v. ELA, decided March 29, 2006, 167 DPR ____ (2006), 2006 TSPR 44."

This last case is equally illustrative, Gonzalez Fuentas v. ELA, which concerns fourteen convicts for the crime of homicide who went before the Supreme Court requesting the revocation of a judgment by the Court of Appeals in which said forum determined that the Administration of Correction acted correctly by cancelling the privilege of parole under electronic supervision to these convicts and ordering their re-incarceration, given that homicide convicts for the crime of homicide didn't quality for the program of

electronic supervision. In said case, the Administration of Correction had released under electronic supervision the convicts on different dates between June 2000 and November 2003 when Act No. 49 of 1995, which expressly excluded homicide convicts from being eligible for the program, had already come into effect.

The Court confirmed the determination of the Appeals Court "since at the moment of committing the criminal acts the convicts did not have the right to be released under electronic supervision and that they subsequently were released by virtue of an administrative error which did not create liberty interests protected under due process of law." It added:

> On the other hand, it should be pointed out that administrative errors are not capable of creating liberty interests that trigger the protection of due process of law. To that effect, we have expressed on various occasions that "an administrative error does not create a state of law that binds an agency nor does it prevent its correction." Santiago-Declert v. Albanesi v. Departmento de la Familla, 2001 TSPR 5, decided January 17, 2001; Magriz Rodriguez v. Empresas Nativas, Inc., 143 DPR 63 (1997). In view of the above, an administrative action through which a convict is erroneously granted liberty can be rectified by the agency without violating the subject's constitutional rights.

> There should be no doubt, therefore, that the convicts did not have the right to be released under said program in accordance with the legislation in effect at the moment that they were granted said privilege. Therefore, the Administration of Correction's act of releasing the convicts from prison based on said program was contrary to the express terms of the norms established by the Legislative Assembly in Act No. 49 of 1995.
>
> In accordance with what has been set forth, it must be concluded that in the present case the convicts were granted release via an administrative act which found no support under the law. That constitutes an administrative error that is capable of being corrected. As we have expressed, administrative errors cannot generate a liberty interest capable of activating the protection of the due process of law. Santiago Declert v. Albanesi v. Departmanto de la Familla, 2001 TSPR 5. Therefore, we conclude that the Administration of Correction could validly order the return of the convicts to prison without violating their due process of law.

Thirdly, it should be mentioned that the Final Agreement mentioned above and through which Triple-S and the Department of the Treasury agreed on the assignment of a dividend and its corresponding tax levy, deserved, from the aspect of

the origin of said funds, an opinion from the Department of Justice (hereinafter Justice), Opinion 03-09-B, in which it concluded that the assets of Triple-S were of a private nature, for which the agency could correctly assign the dividend as payment for tax over this income. It added that its incorporation as a for-profit entity made viable the capacity for the distribution of dividends and emphasized the accumulation of capital in contrast with the non-existence of charitable donations.

With respect to the controversy before us, Justice indicated: "It's a reiterated principle in our current body of corporate law that the articles of a corporation are its fundamental law. And that these are amendable only the formal procedures established in the law of corporations." It also indicated, that the administrative determinations of the Secretary of the Treasury do not amend the articles of incorporation signed by the juridical entities. It was of the opinion that "the determination to grant an exemption to Triple-S and subsequently to Triple-S, Inc., because it operated as a not-for-profit organization didn't have the effect of changing the lucrative nature expressed in the certificate of incorporation of both entities."

Finally, in its analysis Justice concluded that while Triple-S was a beneficiary of the administrative determinations emitted by the Treasury, it never made a donation for charitable purposes or for public charity or for welfare over its private assets; never, not even implicitly, did it create a trust with non-pecuniary purposes over its

private assets; and never converted in any other way its private assets into goods destined to public charity, charitable goods, welfare or public goods.

It light of the previous discussion, we should concur with the Municipal Revenue Collection Center and conclude that the Department of the Treasury acted illegally by granting the insurer, an entity organized as a for-profit corporation, exemption over the payment of its taxes as provided in Sec. 1101(6) of the Internal Revenue Code. Since this tax benefit is of exclusive application to entities organized with no pecuniary ends, the Department of the Treasury doesn't have the authority to grant said right to entities not covered by the same. Its action was null and *ultra vires*.

The report of the Commission on Banking, Insurances and Financial Affairs of the House of Representatives offers a summary of all of the steps taken by the insurer aimed at requesting privileged tax treatment from the legislature. Even though these produced no results, certainly on those occasions the insurer proceeded correctly before the corresponding forum so that its claims would be addressed. The Department of the Treasury doesn't have the authority to oppose its criteria beyond the bounds of the legal realm provided by the legislature nor to substitute its language.

Triple-S did not fulfill the necessary requirements to enjoy the tax exemption that is provided for in this legal disposition and the mere will of the incorporators cannot constitute sufficient

motivation to alter the state of law provided by the legislature. "Neither the Secretary nor the taxpayer can vary or modify what the law says." Licoreria Trigo v. Secretario de Hacienda, 94 D.P.R. 270, 281 (1967). Certainly our legal system does not provide for this kind of exceptions, for which the administrative determinations that granted tax exemption to Triple-S pursuant to Sec. 1101 (6) of the Internal Revenue Code were incorrect and, therefore, were *ultra vires* actions. See Camacho Torres v. Adm. Para el Adiestramiento de Futuros Empresarios y Trabajadores, *supra,* where the Supreme Court when considering a controversy related to an administrative determination over personnel issues, indicated: "after all, *ultra vires* acts of public officials do not generate or create rights, do not obligate the administrative organism nor do they impede it from effectuating a correction."

Therefore, we conclude as does the CRIM that this Agency does not have to honor the previous determinations of the Department of the Treasury when the same are in total contravention of the clear language of the law. Our Highest Forum has reiterated that an administrative act clearly in conflict or against the law is null. See P.S.P v. Comision Estatal de Elecciones, 110 D.P.R. 400, 409 (1980).

The change in public policy of the Department of the Treasury does not presuppose the validity of its prior determinations, which we declare null and, therefore, these did not create any right in favor of the insurer. Consequently, the CRIM, not even as a

last resort, was obligated to follow the general rule that establishes the prospective revocation of the administrative determinations nor did it violate the due process of law of the Plaintiffs by notifying the debt corresponding to prior years.

Since a determination issued by a administrative agency which contravenes the clear letter of a law is null, it cannot grant any right and it follows that its revocation has a retroactive effect. The notification to Triple-S of the real property taxes for the years 1992-93 to 1999-00, both inclusive, is correct and in accordance with the law.

FOR THE REASONS STATED ABOVE, the motion for summary judgment regarding the levy of real property taxes presented by Triple-S is hereby **DENIED** and the motion for summary judgment presented by the CRIM is declared **GRANTED.** Triple-S is also ordered to, proceed with the payment of the real property taxes owed which were notified and claimed by the CRIM.

IT IS ORDERED THAT THIS BE RECORDED AND NOTICE GIVEN.

Appendix B

In San Juan, Puerto Rico, on [hw: 29] of [hw: October] of 2007.

[signature]
Teresa Medina Monteserin
Superior Court Judge

[ink stamp:
I CERTIFY:
Atty. Rebecca Rivera Torres
Regional Clerk
By: Linda M. Levy Rodriguez
[illegible handwriting]
Assistant Clerk
NORANGELY RIBOT AGUTAR ATTY.
REBECCA RIVERA TORRES GENERAL
REGIONAL CLERK]

Translation Notes and Clarifications: On each page of the preceding judgment there appears at the left-hand margin a single set of handwritten initials and a header at the top stating: "Judgment" Triple-S Management Corp. and Triple-S, Inc.

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix B

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

TRIPLE S MANAGEMENT CORP.	CASE: K CO2006-0014
	ROOM: 0603
PLAINTIFF	
VS.	
MUNICIPAL REVENUE COLLECTION CENTER	TAXES
	CHALLENGE/ DEFICIENCY L91 29654 TAX ON GROUNDS/OFFENSE
DEFENDANT	

ATTY ORTIZ ALVAREZ
PEDRO E
PO BOX 9009
PONCE PR
00732-9009

NOTIFICATION OF JUDGMENT

THE UNDERSIGNED CLERK NOTIFIES YOU THAT THIS COURT HAS ISSUED A JUDGMENT IN THE CAPTIONED CASE DATED DECEMBER 5, 2007, WHICH HAS BEEN DULY REGISTERED AND FILED IN THE RECORDS OF THIS CASE, WHEREIN YOU MAY LEARN IN DETAIL THE TERMS OF THE SAME.

AND, SINCE YOU ARE OR REPRESENT THE PARTY PREDJUDICED BY THE JUDGMENT OF

Appendix B

WHICH AN APPEAL CAN BE TAKEN, I ADDRESS THIS NOTIFICATION TO YOU, HAVING FILED IN THE RECORDS OF THIS CASE A COPY OF THE SAME DATED JANUARY 22, 2008.

ORTIZ PIETRI EDWIN
PO BOX 195387
SAN JUAN PR
00919-5387

SAN JUAN, PUERTO RICO ON
JANUARY 22 OF 2008

ATTY. REBECCA RIVERA TORRES

CLERK [illegible handwriting]
BY: NORANGELY RIBOT AGUIAR

ASSISTANT CLERK

O.A.T. 704-NOTIFICATION OF JUDGMENT

TELETRIBUNALES: (787) 759-1888/ISLAND,
FREE OF CHARGE (787) 1-877-759-1888

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix B

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF SAN JUAN

TRIPLE S MANAGEMENT CORP., TRIPLE S, INC. Plaintiffs CENTRO DE RECAUDACION DE INGRESOS MUNICIPALES [Municipal Revenue Collection Center] Defendant	CIVIL NUM: KCO 2006-0014 (603) RE: CHALLENGE TO LEVY OF TAXES OVER PERSONAL PROPERTY

JUDGMENT

Seguros de Servicios de Salud de Puerto Rico, Inc., commonly known as Triple-S, was organized in 1959 as a for-profit corporation according to the provisions of Act No. 3 of January 9, 1956, known as the General Law of Corporations, then in effect and the Insurance Code of Puerto Rico. The main purpose for its organization was to provide pre-paid low cost medical/hospital service plans, based on the free selection of physicians, dentists and other health care providers.

Appendix B

Since its incorporation, and until 1979, Triple-S was subject to the payment of taxes over its income and property. Since that year, nevertheless, and after a diversity of measures taken by the insurer, the Department of the Treasury responded affirmatively to the petition for an administrative determination conceding to Triple-S, pursuant to Section 101(8) of the Income Tax Act of 1954, as amended, an exemption for the payment of income taxes. The concession was subject to a series of terms and conditions established by the Secretary of the Treasury such as: (1) the requirement that Triple-S operate as a not-for-profit entity; (2) the Triple-S stocks could not yield dividends of any kind; (3) in case of redemption, liquidation, or dissolution, the stocks shall not generate economic benefit of any kind; and (4) any benefit or remainder of Triple-S would be destined to public or social purposes.

Said section 101(8) remains basically unaltered today in section 1101(6) of the Internal Revenue Code of 1994 and provides for the concession of tax exemptions to "leagues or civic organizations that are not organized for purposes of profit but rather that function exclusively for the promotion of social well-being...", 13 LPRA Sec. 8501.

What made the insurer worthy of said exemption was its allegation that the Insurance Code of Puerto Rico did not contemplate the creation of a nonprofit stock insurer and only provisions associated with for-profit organizations afforded the organizing opportunity to the insurer the celerity and flexibility necessary to be operational. In response to the

interest of the incorporators to operate according to the provisions corresponding to a non-profit and to the dilemma faced in the Code, they voluntarily renounced to earn dividends of any kind.

Eventually, the Department of the Treasury considered and issued on June 12, 1987 an additional determination, under article 291(t) of the Political Code, of tax exemption for the real and personal property of Triple-S. From that moment, the insurer was exempt from both the payment of income tax as well as the payment of taxes for real and personal property.

In 1998, the Treasury ratified for the last time its tax determination, taking into consideration the corporate reorganization presented by Triple-S by which Triple-S, Inc., and its parent company Triple-S Management, Corp. (both, plaintiffs in the controversy before us) were created.

For its part, the Municipal Revenue Collection Center (hereinafter CRIM), the agency then created as part of the Municipal Reform of 1991 and with the responsibility for collecting, receiving and distributing to the municipalities the public funds derived from the property tax, issued, as did the Treasury, a tax exemption in favor of the present plaintiffs.

After concluding an investigation in 2003 related to the income tax forms of Triple-S Management, Corp., Triple-S, Inc., and other subsidiaries, the Department of the Treasury sent out a communication to the management of Triple-S in

which it notified the derogation of its previous determinations. It noted that this decision was the result of a change in public policy by interpreting in a literal manner section 1101(6) of the Internal Revenue Code, since the same presupposes its application exclusively to entities organized and incorporated as not-for-profit entities.

Finally, and after various discussions, Triple-S and the Department of the Treasury signed a Final Agreement on July 31, 2003 in which they agreed upon an assignment of a dividend for an amount equal to the net profits (retained earnings) accumulated by Triple-S as of December 31, 2002 and attributable to the period during which the exemption was in effect, as well as a disbursement by the insurer of $37,000,000.00, and its commitment to pay an additional $12,000,000.00 corresponding to the retained earnings to be accumulated as of December 2003. Said Agreement did not include any determination regarding property tax, nor did it include the representation or participation of the CRIM.

The Agreement, nevertheless, did have the previous approval of the Justice Department, which in its Opinion #03-09-B found, as did the Treasury, that the assets of Triple-S were of a private nature, for which reason the agency could correctly assign the dividend as payment for taxes on this income. It added that its incorporation, as a for-profit entity, made viable the capacity for the distribution of dividends and

emphasized the accumulation of capital in contrast with the non-existence of charitable donations.

In unison with the investigation of the Department of the Treasury, both Legislative bodies were conducting their own respective investigations surrounding the tax exemption granted to Triple-S. In their Final Reports, the Commission on Governmental Integrity and the Commission of Health and Environmental Affairs of the Senate, as well as the Commission on Banking, Insurance and Financial Affairs of the House of Representatives, concluded that there does not exist any legislation that would enable a for-profit corporation to receive treatment available exclusively to not-for-profit corporations. They equally understood that the payment effectuated pursuant to the Agreement represented the recovery of all taxes that the insurer did not pay because of its tax-exempt status.

Subsequently, through a letter dated March 3, 2006, the CRIM notified Triple-S of the revocation of its administrative determination issued in 1998 and informed that its tax responsibility related to its personal property would begin, in a retroactive manner, with the tax forms of natural year 1991. In total, the CRIM demanded the payment of $3,998,341.27, an amount self-determined by the insurer itself and corresponding to the taxes on the personal property of Triple-S for the years of 1991 to 2002,

inclusively, but unpaid due to the belief that they were covered by the exemption.

The CRIM based its revocation under the argument that compliance by the insurance company with the conditions imposed by the Department of the Treasury did not have the effect of converting the insurer into a not-for-profit entity.. Consequently, since the provision used originally by the Department of the Treasury to grant the exemption is for the exclusive application to not-for-profit entities, the CRIM concluded that the prior determinations of the Department of the Treasury and of the CRIM itself granting the tax exemption did not create any right in favor of the insurer.

Taking exception to said tax levy, Triple-S, Inc. and Triple-S Management, Corp. jointly filed on March 28, 2006 a legal action before this court challenging the retroactive imposition of taxes against its personal property. They alleged that the change in public policy of the Department of the Treasury with respect to its interpretation of the legal provision was applied in a prospective manner pursuant to the Circular Letter 86-3 in effect at the moment of granting the exemption and incorporated today in the 99-1. Because the CRIM is the successor agency to the Department of the Treasury with regards to the levy and collection of property taxes, it was obligated by the determinations of the Treasury and by the Circular Letter 99-1. Triple-S considered the retroactive revocation a violation of due process of

law.

The CRIM answered the complaint with the allegation that the administrative determination of the Department of the Treasury that granted the tax exemption over the payment of taxes was null for being contrary to the letter of the law and, therefore, it never created any right in favor of Triple-S. It indicated that the legal provision under which said agency granted the tax exemption is of exclusive application to entities organized as not-for-profit corporations and, faced with fact that Triple-S was incorporated as a for-profit entity, said determination should have never applied to them. It concluded that the assignment of a dividend attributable to accumulated earnings and the collection of the corresponding tax through the Final Agreement between the Department of the Treasury and Triple-S had the underlying effect of amending the error made by the Department of the Treasury in its prior administrative determinations.

In a conference before this Court, the CRIM and Triple-S stipulated to the nonexistence of any controversy regarding the facts of this case and agreed to the presentation of motions for summary judgment.

In its opinion of May 18, 2006, in the case Blas v. Secretario de Hacienda, 2006 TSPR 85, 168 DPR ___, our Supreme Court summarized the determinative jurisprudence for the application of summary judgment cited as follows:

Appendix B

As it is known, summary judgment is an extraordinary and discretional procedural mechanism that has as its purpose to facilitate a quick and fair solution of lawsuits and civil cases that do not present genuine issues of material facts. E.L.A. v. Cole Vazquez, decided April 13, 2005, 2005 TSPR 46. Said mechanism is expressly regulated by Rule 36 of Civil Procedure, 32 L.P.R.A. Ap. III, R. 36, which establishes that summary judgment can be declared when, from the allegations, depositions, answers to interrogatories and admissions offered together with sworn statements, there does not exist a real controversy over the material and essential facts of the case in question. For this reason, when there exists the most minimum doubt or controversy about material or essential facts of the case, the court shall deny the summary judgment and should celebrate a hearing on the merits. Lopez Colon v. Hon. Miranda Mar-In, decided December 16, 2005, 2005 TSPR 197; Sucn. de Gregorio Maldonado Ortiz v. Sucn. de Francisco Maldonado Hernandez, decided November 9, 2005, 2005 TSPR 166; E.L.A. v. Cole Vazquez, 2005 TSPR 46.

Based on this, we have reiterated that when considering a motion for summary judgment the primary forum will accept

as true the uncontested facts that appear in the documents and the sworn statements presented by the moving party. Lopez Colon v. Hon. Miranda Karin, 2005 TSPR 197; Piero Gonzalez v. A.A.A., 146 DPR 890 (1998). In this way, when from the accompanying uncontested documents it arises that there does not exist a legitimate dispute of fact to be determined, all that is left is to apply the law and that the interests of the parties are not put in danger, judgment shall be rendered without the need to hold a hearing on the merits. Lopez Colon v. Hon. Miranda Mar-In, 2005 TSPR 197; Audiovisual Lang. v. Est. Natal, 144 DPR 563 (1997). Of course, taking into consideration that the summary judgment is a remedy of discretional nature, "the wise discernment is the reigning principle for its use because, wrongly used, it could lend itself to strip a litigant of 'its day in court, elementary principle of the due process of law.'" Management Aministration Services Corporation v. Estado Libre Asociado de Puerto Rico, 152 DPR 599, 611 (2000); Cordova v. Larin, 151 DPR 192 (2000); Roig Com. Bank v. Rosario Cirino, 126 DPR 613, 617 (1990).

For this reason, the trial court, when rendering a summary judgment: (1) will analyze the documents that accompany

> the motion requesting summary judgment and the documents included with the motion in opposition and those which are in the file with the court; and (2) will determine whether the opposing party contested any material fact or if there are allegations of the complaint that have not been contested or refuted in any way by the documents. Management Aministration Services Corporation v. Estado Libre Asociado de Puerto Rico, 152 DPR 599 (2000), to page 611; PFZ Props., Inc. v. Gen. Acc. Ins. Co., 136 DPR 881 (1994).

With the benefit and direction of these expressions we proceed to address the legal controversy before us.

Section 101(8), incorporated today almost unaltered in section 1101(6) of the Internal Revenue Code of 1994 and which was used by the Department of the Treasury as the foundation for its administrative determinations for granting tax exemption to Triple-S reads, in pertinent part as follows:

> Except as provided in secs. 8690 to 8697 of this title, the following organizations shall be exempt from taxation under this Part:
> (1)...
> (6) Civic leagues or organizations not organized for profit but operated

> exclusively for the promotion of social welfare, or local association of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Notice that subsection 6 establishes two requirements that every organization should observe in order to be meritorious of the exemption therein provided: (1) not be organized for purposes of profit, and (2) dedicate its net earnings in an exclusive manner to charitable, educational, or recreational purposes. The evidence presented by the plaintiffs does not place them in this direction.

The incorporation of the plaintiff party as a for-profit entity is an uncontested fact. The insurer claims that in said organizational precepts it found the necessary agility to begin its duties. Even though it is true that the by-laws of the organization provide for the non-distribution of dividends, it is no less true that almost 40 years have gone by since its incorporation and Triple-S is still an entity organized for purposes of profit. In the cited opinion of the Department of Justice, this governmental agency indicated: "it's a reiterated principle in our current body of corporate law that the articles of a corporation are its fundamental law. And that these are

amendable only by the formal procedures established in the law of corporations."

It is also indicated, that the administrative determinations of the Secretary of the Treasury do not amend the articles of incorporation signed by juridical entities. It held the view that "the determination to grant an exemption to Triple-S and subsequently to Triple-S, Inc., because it operated as a not-for-profit organization didn't have the effect of changing the lucrative nature expressed in the certificate of incorporation of both entities." Clearly, Triple-S has never complied with the first requirement.

Likewise, we found no evidence presented by the insurer that demonstrates its compliance, during the course of the enjoyment of the exemption, with the second requirement provided in section 1101(6). The Department of Justice in its analysis concluded that while Triple-S was the beneficiary of the administrative determination issued by the Department, it never made a donation for charitable purposes or for public charity or for welfare over its private assets; never, not even implicitly, did it create a trust with non-pecuniary purposes over its private assets; and never converted in any other way its private assets into goods destined to public charity, charitable goods, welfare or public goods.

We concur with the CRIM in its argument that not only did Triple-S not qualify for the granted exemption on the grounds that it is a for-profit entity, but that it also doesn't qualify under the

second requirement mandated under the law to the effect that its net utilities be dedicated exclusively to charitable educational or recreational purposes. Triple-S did not and does not comply with the requirements necessary to enjoy the tax exemption that is provided for in this legal disposition and the mere will of the incorporators cannot constitute sufficient motivation to alter the state of law provided by the legislature. "Neither the Secretary nor the taxpayer can vary or modify what the law says", Licoreria Trio v. Secretario de Hacienda, 94 DPR 270, 281 (1967). Certainly our legal system does not provide for this kind of exceptions, for which the administrative determinations that granted tax exemption to Triple-S pursuant to section 1101(6) of the Internal Revenue Code were incorrect and, therefore, were *ultra-vires* actions. See Camacho Torres v. Adm. Para el Adiestramiento de Futuros Empresarios y Trabaladores, 2006 TSPR 88 (168 DPR ___), where the Supreme Court when considering a controversy related to an administrative determination over personnel issues, indicated: "after all, ultra-vires acts of public officials do not generate or create rights, do not obligate the administrative organism nor do they impede it from effectuating a correction."

In the same way, we conclude as does the CRIM, that this agency does not have to honor the previous determinations of the Department of the Treasury when the same are in total contravention of the clear language of the law. Our Highest Forum has

reiterated that an administrative act clearly in conflict or against the law is null. See P.S.P v. Comision Estatal de Elecciones, 110 DPR 400, 409 (1980).

A null act is nonexistent therefore it does not generate juridical consequences. In other words, "what is null never had any juridical efficacy, never was born in right, never existed." Montañez v. Policia de Puerto Rico, 150 DPR 917 (2000), Brown v. JD Cond. Plava Grande, 154 DPR 225 (2001).

Recently, in McClintock Hernández, et al., v. Rivera Schatz, PNP, 2007 TSPR 121, (171, DPR ___), the Supreme Court was faced with the validity of a sanction of the PNP that prohibited senators Arce Ferrer, Padilla Alvelo and senator Diaz Sanchez from running as candidates under the emblem of said party and from participating in its primary procedures, versus the provisions of the electoral law that grant to the party affiliated voters the right to request primaries from it.

After indicating that the legislature has the constitutional duty to promulgate "the laws [that] shall guarantee the expression of the will of the people through universal suffrage...and shall protect the citizen against all co-action in the exercise of the electoral prerogative." Constitucion del Estado Libre Asociado Art. II, Sec. 2, L.P.R.A., Volume I, the Court ruled that "in light of the facts of this case, the sanction imposed by the PNP to senators Arce Ferrer and Padilla Alvelo and to senator Diaz Sanchez in preventing them from participating in a primary process is invalid since it

contravenes the provisions of the electoral law." The Court included footnote number 20, where it indicated: "Certainly, any regulatory provision that contravenes what is herein provided is invalid."

In its opinion in Partido Accion Civil v. PIP, CEE, et al., 2006 TSPR 193 (169 DPR ___), the Supreme Court indicated: "we are of the opinion that the Commission was not entitled to demand or add, a requirement or limitation that the legislator did not see fit to establish. The Commission exceeded its authority by establishing in Section 8.3 of the Regulation, that it would not accept applications for the inscription of new parties from June the 1st until December 21st of the year in which the general elections are celebrated. Its action is *ultra vires*, which is contrary to the law and, therefore, null." (Emphasis in the original).

Based on these and other similar determinations of our Highest Forum, we conclude that the Department of the Treasury did not have the authority to grant a tax exemption to a for-profit corporation that did not nor does not qualify under any of the requirements or criteria necessary to enjoy the claimed tax exemption. The letter of the law under which the Department of the Treasury based its determination states that said benefit is for the exclusive application to not-for profit organizations, for which reason this Agency had no discretion to grant a right that the law does not provide. The determinations regarding the exemption of Triple-S, as well as

that issued by the CRIM during 1998 are ultra-vires, contrary to the law and, therefore, null. The change in public policy of the Department of the Treasury does not presuppose the validity of its prior determinations which we declare null and, therefore, these did not generate any right in favor of the insurer. Consequently, the CRIM was not obligated to follow the general rule that establishes the prospective revocation of the administrative determinations nor did it violate the due process of law of the plaintiffs by notifying the debt corresponding to previous years. Like the CRIM, we interpret that Circular Letter 99-01 itself of the Department of the Treasury acknowledges the retroactivity of the revocations of administrative determinations. Furthermore, the opinion of the Department of Justice characterized the change in the public policy of the Department as one of retroactive application in order to include Triple-S as the corporate entity predecessor of Triple-S, Inc. Similarly, both legislative bodies described the payment issued by Triple-S as the recovery of the income taxes that the insurer did not pay during the years it enjoyed the exemption. Both the executive branch through the Department of Justice, as well the legislative branch, by way of the legislative commissions, evaluated this controversy and concluded that there did not exist any legal provision that authorized a for-profit corporation to enjoy benefits available only to non-profit entities. All of the above is known by the plaintiff party who knows its corporate by-laws and the way in which

it operates and who without a doubt, knows/or should have known that it did not qualify, nor does it qualify for the claimed exemption which remained patently confirmed with the transaction which took place between itself and the Department of the Treasury.

Inasmuch as a determination issued by an administrative agency that contravenes the clear letter of a law is null, it cannot grant any right and it is fitting that its revocation has a retroactive effect. The levy of personal property taxes for the years 1991 through 2002, notified by the CRIM to Triple-S is correct and in accordance with the law.

Finally, and regarding the allegation of prescription and the capacity of the CRIM to review the tax forms of the last four (4) years only, we direct our attention to article 6.18 of Act No. 83 of August 30, 1991, as amended, 21 LPRA § 5218. It provides a period of proscription of four years after which the CRIM is prevented from conducting a review of: (1) the personal property tax form; (2) the valuation of the property; (3) the calculation of the tax paid by the taxpayer, and to determine the correct tax to be paid counted from the date the taxpayer would have filed the form. In light of the principle of personal property tax, that the cited article contemplates the determination by the CRIM of a deficiency. In other words, said section presupposes a fault by the taxpayer in the filling out of its tax form, in which case, the CRIM certainly has four (4) years

to audit the tax form and detect the mistake. Nevertheless, that is not the case in this controversy. The claim of the CRIM responds to the collection of the tax, which was self-determined and declared exempt by a null administrative determination for being contrary to the law and not to a determination of deficiency detected after an audit. We conclude that the CRIM can carry out the collection procedure of the amount determined by the taxpayer as its tax liability during the years 1991 to 2002, inclusively.

There being no controversy on the facts and having established that the administrative determinations leading to the granting of tax exemption to Triple-S were the result of *ultra-vires* and null acts, this Court denies the Motion for Summary Judgment regarding the challenge of the personal property tax levy presented by Triple-S and grants the Motion for Summary Judgment presented by the CRIM. It also orders Triple-S to proceed with the payment of the taxes due against its personal property during the years 1991 to 2002, which were self-imposed by the insurer and claimed by the CRIM, as soon as this judgment becomes final and unappealable.

Appendix B

IT IS ORDERED THAT THIS BE RECORDED AND NOTICE GIVEN.

In San Juan, Puerto Rico,
on this December 5, 2007.

[signature]
GLORIA I. PEREZ MAURY
Superior Court Judge

[ink stamp:

I CERTIFY: [illegible handwriting]
NORANGELY RIBOT AGUTAR
ATTY. REBECCA RIVERA TORRES
GENERAL REGIONAL CLERK]

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix B

COMMONWEALTH OF PUERTO RICO
OF GENERAL COURT OF JUSTICE
SUPREME COURT

TRIPLE S MANAGEMENT CORP., TRIPLE S, INC. — PETITIONER

VS.

MUNICIPAL REVENUE COLLECTION CENTER — RESPONDENT

CASE: CC-2008-0857 CIVIL ACTION
ORI.CASE: KC02006-0029
CIR. CASE: KLAN2007-1749

CIVIL OR CRIMINAL ACTION

ORTIZ ALVAREZ PEDRO E
PO BOX 9009
PONCE PR
00732-9009

NOTIFICATION

I CERTIFY THAT REGARDING THE PETITION FOR CERTIORARI THE COURT DECLARED THE ACCOMPANYING RESOLUTION:

ORTIZ PIETRI EDWIN [ATTY]
PO BOX 10982- CAPARRA HEIGHTS STATION
SAN JUAN, PR 00

Appendix B

ATTY EDWIN ORTIZ PIETRI
MUNICIPAL REVENUE COLLECTION CENTER- BOX 195387 SAN JUAN PR 00919-5387

SAN JUAN , PUERTO RICO
ON MARCH 16 OF 2009

ATTY. AIDA I. OQUENDO GRAULAU

CLERK OF THE SUPREME COURT
[illegible handwriting]

EVELYN RAMOS VELILLA

ASSISTANT CLERK

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT TRANSLATION OF ITS ORIGINAL IN THE SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix B

IN THE SUPREME COURT OF PUERTO RICO

Triple S. Management, Corp.; Triple S, Inc. Petitioners v. Centro de Recaudación de Ingresos Municipales (CRIM) [Municipal Revenue Collection Center] Respondent	Num. CC-2008-857

RESOLUTION

San Juan, Puerto Rico, on March 13 of 2009.

The *certiorari* request presented by the petitioning party, is hereby denied.

Held the Court and certifies the Clerk of the Supreme Court. President Judge Mr. Hernández Denton and Associate Judge Mr. Martínez Torrez would grant. Associate Judge Ms. Pabón Charneco does not intervene.

Appendix B

[signature]
Aida Ileana Oquendo Graulau
Clerk of the Supreme Court

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
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SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
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THE UNITED STATES COURTS

Appendix B

COMMONWEALTH OF PUERTO RICO
OF GENERAL COURT OF JUSTICE
SUPREME COURT

TRIPLE S MANAGEMENT CORP., TRIPLE S, INC. — PETITIONER

VS.

MUNICIPAL REVENUE COLLECTION CENTER — RESPONDENT

CASE: CC-2008-0857 CIVIL ACTION
ORI.CASE: KC02006-0029
CIR. CASE: KLAN2007-1749

CIVIL OR CRIMINAL ACTION

ORTIZ ALVAREZ PEDRO E
PO BOX 9009
PONCE PR
00732-9009

NOTIFICATION

I CERTIFY THAT REGARDING THE MOTION FOR RECONSIDERATION THE COURT DECLARED THE ACCOMPANYING RESOLUTION:

ORTIZ PIETRI EDWIN [ATTY]
PO BOX 195387-
SAN JUAN PR 00919-5387

Appendix B

ATTY EDWIN ORTIZ PIETRI
MUNICIPAL REVENUE COLLECTION CENTER- BOX 195387 SAN JUAN PR 00919-5387

SAN JUAN , PUERTO RICO ON APRIL 28 OF 2009

ATTY. AIDA I. OQUENDO GRAULAU

CLERK OF THE SUPREME COURT
[illegible handwriting]
EVELYN RAMOS VELILLA

ASSISTANT CLERK

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT TRANSLATION OF ITS ORIGINAL IN THE SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix B

IN THE SUPREME COURT OF PUERTO RICO

Triple S. Management, Corp.; Triple S, Inc. Petitioners v. Centro de Recaudación de Ingresos Municipales (CRIM) [Municipal Revenue Collection Center] Respondent	Num. CC-2008-857

RESOLUTION

San Juan, Puerto Rico, on April 24 of 2009.

The motion for reconsideration by the petitioning party, is hereby denied.

Held the Court and certifies the Clerk of the Supreme Court. President Judge Mr. Hernández Denton and Associate Judge Mr. Martínez Torrez would reconsider. Associate Judge Ms. Pabón Charneco does not intervene.

Appendix B

[signature]
Aida Ileana Oquendo Graulau
Clerk of the Supreme Court

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
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/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
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Appendix B

COMMONWEALTH OF PUERTO RICO
OF GENERAL COURT OF JUSTICE
SUPREME COURT

TRIPLE S MANAGEMENT CORP., TRIPLE S, INC. — PETITIONER

VS.

MUNICIPAL REVENUE COLLECTION CENTER — RESPONDENT

CASE: CC-2008-0857 CIVIL ACTION
ORI.CASE: KC02006-0029
CIR. CASE: KLAN2007-1749

CIVIL OR CRIMINAL ACTION

ORTIZ ALVAREZ PEDRO E
PO BOX 9009
PONCE PR
00732-9009

NOTIFICATION

I CERTIFY THAT REGARDING THE SECOND MOTION FOR RECONSIDERATION THE COURT DECLARED THE ACCOMPANYING RESOLUTION:

ORTIZ PIETRI EDWIN [ATTY]
PO BOX 195387-
SAN JUAN PR 00919-5387

Appendix B

ATTY EDWIN ORTIZ PIETRI
MUNICIPAL REVENUE COLLECTION
CENTER- BOX 195387
SAN JUAN PR 00919-5387

SAN JUAN , PUERTO RICO ON MAY 27 OF 2009

ATTY. AIDA I. OQUENDO GRAULAU

CLERK OF THE SUPREME COURT
[illegible handwriting]
EVELYN RAMOS VELILLA

ASSISTANT CLERK

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

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IN THE SUPREME COURT OF PUERTO RICO

Triple S. Management, Corp.; Triple S, Inc. Petitioners v. Centro de Recaudación de Ingresos Municipales (CRIM) [Municipal Revenue Collection Center] Respondent	Num. CC-2008-857

RESOLUTION

San Juan, Puerto Rico, on May 22, of 2009.

The second motion for reconsideration is hereby denied. Abide by the ruling of this Court.

Held the Court and certifies the Clerk of the Supreme Court. President Judge Mr. Hernández Denton and Associate Judge Mr. Martínez Denton and Associate Judge Mr. Martínez Torrez would reconsider. Associate Judge Ms. Pabón Charneco does not intervene.

Appendix B

[signature]

Aida Ileana Oquendo Graulau

Clerk of the Supreme Court

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
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THE UNITED STATES COURTS

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U.S. Const., amend XIV, § 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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U.S. Const., amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

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P.R. Laws Ann. tit. 13, § 473

The Secretary of the Treasury shall have authority to issue all such regulations, orders and instructions as may be required for carrying out the provisions of Title IX of the Political Code, and such regulations, orders and instructions, when duly issued, shall have all the force of law.

Appendix B

Puerto Rico Property Tax Act, P.R. Laws Ann. tit. 13, § 551 (repealed 1991)

The following property shall be exempt from assessment for taxation purposes:

(a) Personal property that is not used in industry or business, such as home furnishings, jewelry, collections (coins, stamps, works of art, etc.), securities, furniture in a second home, boats, animals owned for noncommercial purposes, etc. Nothing in this section shall be construed as a tax exemption on machinery for agricultural work, or on the furniture, utensils and provisions of hotels, restaurants and taverns, without prejudice to the exceptions provided in the subsections that follow.

For the purposes of homestead protection, all property on which the owner has constituted his homestead shall also be exempt from assessment for taxation purposes, provided his total property is assessed at no more than three thousand five hundred dollars ($3,500.00).

The circumstances established herein as a justification for homestead protection shall be evidenced by an affidavit in the manner and form that the Secretary of the Treasury of Puerto Rico may determine; Provided, That in the cases of persons who are enjoying homestead exemption when this act takes effect, it shall not be necessary to file a new application for exemption, but in such cases the exemption shall continue in force if it meets all the requirements of this chapter, and shall

be subject to all the provisions hereof. The Secretary of the Treasury shall designate the agents or employees before whom such affidavits shall be sworn to and said agents or employees so designated by the Secretary of the Treasury are hereby authorized to take oaths in these cases; Provided, That no stamps of any kind shall be required to be cancelled in the affidavits sworn to before said agents or employees, and said service shall be furnished to the taxpayer free of any cost.

The homestead protection established herein shall continue in effect after the death of the owner of the property, in favor of the surviving spouse as long as the latter continues to occupy said homestead, and after the death of both spouses, it shall continue in favor of their children until the youngest of them comes of age. In case the husband or the wife should abandon the home, the homestead protection shall continue in favor of the spouse who occupies the property as a residence; and in case of a divorce, the court which grants it shall make disposition of the homestead in accordance with the equity of the case.

In the case of an unmarried person, the homestead protection shall continue to subsist after his death, in benefit of his ascendants and descendants up to the fourth degree, his foster parents, and adoptive or foster children who may reside with them, as long as the latter continue to occupy said homestead, and until the youngest of said persons has come of age.

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The exemption granted herein shall take effect during the fiscal year corresponding to the date of assessment following the date on which the application was filed. The exemption granted herein shall cease when the conditions and requirements prescribed in this section cease to exist, and said property shall begin to be taxed during the fiscal year corresponding to the date of assessment following the date on which the necessary conditions and requirements for the enjoyment of said exemption cease to exist.

It shall be the duty of any person who is enjoying the benefits of this homestead protection, and who sells, cedes or conveys the property subject to said protection, or who abandons it, or moves away from it, to notify the Secretary of the Treasury of Puerto Rico, in writing, within the term of fifteen (15) days after said sale, cession, conveyance, abandonment or moving.

Any person failing to comply with the requirements prescribed in the preceding paragraph, and any person who illegally, willfully, or with malice aforethought, by the use of false and fraudulent simulations of sale, assignment or alienation, or by fraudulent conveyance, obtains the benefits of this act; or swears out an affidavit setting forth, knowing that it is false, that he has his homestead constituted on a property of his own, in order to obtain the benefits of this act; or who conceals property belonging to him in order to entitle him to the benefits hereof, shall be guilty of a misdemeanor and shall, upon conviction thereof, be

punished with a fine of not more than two hundred and fifty (250) dollars or imprisonment for a term of not more than one (1) year.

The provisions of this act shall not apply to property acquired by a conditional sales contract, or by installments, or by lease-purchase agreement, until the title has become effective by the total liquidation of the obligation, nor to sales, conveyances, cessions or alienations made for the purpose of taking undue advantage of the benefits of this act.

(b) Property of the United States and all property exempted from the payment of taxes by the laws of the United States; the property of the Commonwealth of Puerto Rico, and of the Conservation Trust of Puerto Rico, except as provided in section 448 of this title; property of any municipal district or other local division devoted exclusively to public use, even though such property is a source of revenue to such municipal district or other local divisions to which it belongs; Provided, That in those cases in which the Commonwealth government has conveyed, or shall convey in the future, lands or properties belonging to it, in usufruct to private persons or entities, said lands or properties so conveyed shall be subject to the property tax laws, and the usufructuaries shall be liable for the payment of said taxes; Provided, further, That in the case that the usufructs mentioned above are for a term greater than five (5) years, or for life, the usufructuaries shall be

considered as owners of the property for all purposes of the tax exemption laws of the Commonwealth.

(c) The indebtedness owed by any taxable person, association or corporation, to the extent and in the manner prescribed in sections 448 and 449 of this title.

(d) Shares of capital or stock in institutions, corporations or companies organized under the laws of Puerto Rico when the property of such corporations is exempt or when such shares are taxable to said institutions, corporations or companies themselves, to the extent and as provided in sections 463 and 468 of this title; and the shares of capital or stock of foreign corporations owned by natural persons or by investment companies registered and organized under the laws of Puerto Rico.

(e) Every building, including the equipment and furniture therein, partially or totally used and set apart for religious worship as well as for parish houses used as dwellings of priests, ministers, or clergymen and where they constantly live; every building, including the equipment and furniture therein, partially or totally set apart for a Masonic or Oddfellows' lodge or for a center for theosophical or psychic studies, or used as a center for literary and scientific education or as charity center; every building, including the equipment and furniture therein, partially or totally used and set apart for labor organizations or as a place for recreation, culture and social intercourse, and which permanently maintains a reading room where

periodicals, magazines, pamphlets and illustrated press in general, national as well as foreign, are provided; and every tract of land, not exceeding five (5) cuerdas in extent, upon which such building or buildings is or are constructed; provided such grounds and buildings are the absolute property of the organization or institution applying for the exemption; and provided the said institution is not for pecuniary profit; Provided, That in the cases of institutions devoted to teaching, the limitation of five (5) cuerdas, hereinbefore set forth shall not apply, and the tax exemption on the land shall be extended up to a maximum of two hundred (200) cuerdas of the land owned by each institution, provided that the said lands are totally and partially used in regard to teaching; Provided, however, That in the event that part of the property is not occupied by the organization or institution for its nonprofit aims and purposes, or that part of the property is leased and producing pecuniary profit, either for the lessor or for the lessee, the part of the property so used shall be subject to the imposition and payment of taxes in the manner, within the term and upon compliance with the requirements provided by law.

(f) Cemeteries, tombs, and the rights of burial, so long as the same shall be dedicated for the burial of the dead and no dividends or profits derived therefrom, except in the case of dividends or profits derived from cemeteries owned by municipalities.

(g) Fish in the possession of the fishermen by whom caught, and the ships of any kind which constitute the working tools of the fishermen and the

fishing boats exclusively devoted to fishing as a part of an industrial unit, or of an entity devoted to fishing and to the exclusive transportation of fish for purposes of industrial process in Puerto Rico, or to any of these.

(h) The growing crops and products of the land actually owned by and still in the hands of the producer; bovine cattle and the silos used on the cattle ranches exclusively for the fermentation of fodder; poultry and the equipment and structures specifically constructed for poultry production; the swine and equipment and structures specifically constructed for the raising of swine, and the thoroughbred horses for breeding, race horses, the equipment and structures constructed and the lands developed specifically for breeding thoroughbred race horses. Provided, That it shall be understood that "thoroughbred equine racing livestock" are those devoted to breeding and that are registered in the Genealogical Registry of Race Horses of Puerto Rico which the Horse Racing Sport Administration keeps, according to the regulations in force.

(i) The professional tools or working tools of mechanics, or artisans, moved or worked exclusively by hand.

(j) Household furniture, wearing apparel, and provisions and fuel kept for the use and consumption of the person to whom they belong. But nothing in Title IX of the Political Code contained shall be held to exempt agricultural machinery, or the furniture or utensils and provisions of hotels, restaurants and

eating-houses except as provided for in the preceding paragraphs.

(k) All educational and professional books and private libraries.

(l) All family pictures.

(m) Non-interest bearing mortgage bonds and other obligations used exclusively as guarantees or securities for the proper performance of official duties; liens and censos bearing interest at not to exceed five (5) percent per annum, provided the same are especially devoted to the fulfillment of testamentary will, for which reason they are applied to charitable or educational purposes.

(n) Motor vehicles subject to payment of license fees (number plates) provided by the Automobile and Traffic Act, sections 171-196 of Title 9, except those had in stock by natural or artificial persons who are dealers in motor vehicles.

(o) All real property exempt from taxation by the Political Code, as well as by any act of the Legislature, shall be registered, described and appraised, as it is done with property not exempt. The Secretary of the Treasury shall carry a register of the description and appraisals of this exempt property and the same shall state the reason for which the exemption has been granted.

(p) Raw sugar and molasses produced from sugarcane in Puerto Rico while they are in the possession of the producer; and refined sugar in the possession of the refiner thereof.

(q) Real or personal property possessed as owner by the government of a foreign country for the total and exclusive utilization thereof for official purposes by its consulate in Puerto Rico, and as long as the said property is used for such purposes, provided the respective countries grant like exemption to properties within their territories belonging to the United States of America and devoted to similar use; Provided, That diplomatic or consular representatives requesting this exemption shall adduce before the Department of State of Puerto Rico the provision of law or treaty or covenant stipulation that establishes such privilege in the country represented by them; and they shall, likewise, notify the Department of State of Puerto Rico, on time, of any sale, conveyance, donation, or other alienation of such property by the government of their nation in Puerto Rico. The Secretary of the Treasury shall cancel any tax receipts that on the date of effectiveness of this act are pending payment on properties that, had this act been in force for the years covered by said taxes, would have qualified for the exemption herein provided.

(r) The property of any hospital, clinic or polyclinic belonging to a religious institution, organization, association, foundation or any other type of institution organized and engaged in nonprofit medico-hospital activities, including the lands, buildings, garages, annexes, dwellings for resident physicians, nurses and nursing students, now existing or to be constructed thereafter as an integrate and indispensable part of the physical plant of said hospitals, clinics or polyclinics;

including further, all the equipment and personal property used in the operation and carrying out of its medico-hospital activities.

The tax exemption granted under this subsection shall be subject to the compliance of the requirement that the religious institution, organization, association, foundation or any other type of nonprofit institution involved, owner of the said medico-hospital installations, has established and maintained or may establish and maintain in the said hospitals, clinics or polyclinics, free or nominal cost dispensary, medico-surgical and hospital services and laboratory services to indigents, which in the judgment of the Secretary of the Treasury and in consultation with the Secretary of Health, taking into consideration the proportion that said services have with the total volume of the services rendered during the preceding taxable period, may justify the privilege of the tax exemption as provided in this subsection; Provided, That the benefits or surpluses obtained in the operation of such activities may not be prorated among the members, individuals, shareholders or members of the nonprofit religious institution or organization, said benefits or surpluses must be devoted to the improvement and expansion of its facilities and services or to any other purpose closely related to the objectives and purposes for which said nonprofit religious institutions or organizations were created.

It shall also be an indispensable requisite for the granting of the tax exemption herein established that the Secretary of Health certify that the

applicant fulfill the minimum requirements to render hospitalization, medico-surgical and laboratory services.

Likewise, it shall be an indispensable condition to enjoy the benefits of this act that every institution covered hereunder forward on time any tax withheld on salaries, pursuant to the provision of section 3141 of this title.

The right to tax exemption granted under this subsection shall be exercised by filing an official form that the Secretary of the Treasury shall furnish for such purposes and the exemption shall take effect on the fiscal year corresponding to the date of assessment following the date of the filing of said form.

It shall be an indispensable obligation of any nonprofit religious institution, organization, association, foundation or any other type of institution enjoying this tax exemption to submit to the Secretary of the Treasury not later then the 15th of April of each year, a written report on its operational activities and on the services rendered to indigents; Provided, That said report shall include a relation of the names and addresses of the indigent patients attended and the cost of the services rendered. The noncompliance of this requirement in the manner and time provided shall constitute sufficient legal ground not to recognize or to revoke any tax exemption previously granted, unless an extension is requested for the filing of the report before the term fixed falls due. The Secretary of the Treasury may grant an extension which shall not

exceed sixty days reckoning from the date on which said report should be submitted, when proved to his satisfaction that special circumstances have hindered or shall hinder the preparation and filing of said report within the term herein provided.

In case that a part of the personal or real property is not used or occupied for its nonprofit ends and purposes, the hospital, clinic or polyclinic belonging to a religious institution, organization, association, foundation or any other type of institution organized and engaged in nonprofit medico-hospital activities or that part of the said real or personal property is leased and producing a pecuniary profit, either to the lessor or to the lessee, the unused, occupied or leased part of said property for nonprofit purposes or leased shall be subject to the payment of taxes in the manner and within the term and upon previous requirements provided by law.

(s) Machinery and equipment used in Puerto Rico for the investigation and/or prospecting for minerals or petroleum by natural or artificial persons who carry out surveys with the approval of the Mining Commission of Puerto Rico. This exemption shall be effective independently of whether said machinery and equipment are being used for such purposes or are not being used, for one reason or another.

(t) Personal and real property belonging to any nonprofit association organized under the laws of Puerto Rico with the object of selling promoted programs or plans of medical and hospital services

provided it complies with the requirements of sections 41-55 of Title 6; Provided, That in case a part of the property is not occupied by the association for its nonprofit ends and purposes or that part of the property is leased and producing a pecuniary benefit, either to the lessor or to the lessee, that part of the property so used shall be subject to the levying and payment of taxes in the manner, within the term and upon the previous compliance of the requirements provided by law.

(u) Television and radio stations operating in Puerto Rico under a broadcasting license or franchise granted by the Federal Communications Commission (FCC).

(v) Any material, equipment or accessories that use solar power for their operation. This exemption shall be recognized for the five (5) years immediately following the acquisition and installation of the equipment.

(w) Real and personal property belonging to an International Banking Entity which has been duly licensed under sections 231-231y of Title 7.

(x) All kinds of vessels not used in any industry or business, with the exception of commercial fishing or rental for recreational purposes, which are duly registered in the Puerto Rico Ports Authority.

(y) Properties to be constructed after January first, 1983, and which are set aside for the rental housing market under Section 515 or Section 521, Plan II, of the Federal Rural Housing Act of 1949, as

amended, Public Law 81-171, pursuant to the following norms:

(i) The tax exemption shall not exceed fifteen thousand (15,000) dollars of valuation per housing unit, according to the criteria for the classification and appraisal of property for taxable purposes pursuant to the provisions of sections 431-438 of this title;

(ii) the lessee cannot hold property for residential purposes directly or indirectly;

(iii) the exemption shall be granted for a period of twenty (20) years as long as the property is kept in the rental housing market under Plan II of Section 515 or 521 of the U.S. Farmers Home Administration and operates on a limited gains basis;

(iv) the Secretary of Housing of the Commonwealth of Puerto Rico shall issue a certificate on the social interest of the dwelling under the U.S. Farmers Home Administration programs 515 or 521, upon receipt of documents to such effect from said Federal Agency. The Secretary of the Treasury shall issue the corresponding tax exemption in accordance with said certificate.

(z) Any authorization and or license that the Public Service Commission may issue to a natural person as a public carrier, provided it is said person who uses the license and/or authorization thus granted, and that it constitutes his instrument of work. A natural person shall not be permitted to enjoy more than one exemption under this subsection.

(aa) Any license, authorization, diploma or certificate granted by virtue of law to natural persons to practice a profession, job or trade.

(bb) Intangible personal property that includes the goodwill, franchise rights, trademarks, concessions, franchises, worth of contracts, patents, inventions, formulas, processes, designs, patterns, technical know-how, methods, programs, system, procedures, campaigns, surveys, studies, forecasts, estimates, mailing lists, technical information and any other information of a like or similar nature.

(bb) Machinery or equipment used in Puerto Rico for the conversion of coal to an energy source. This exemption shall be recognized during the five (5) years immediately following the acquisition or installation of the equipment, provided, that the equipment acquired before the date of approval of this act shall be eligible for the exemption during the first five (5) years of its effectiveness.

(cc) Machinery and equipment or any movable property used in the control, reduction or prevention of environmental pollution belonging to a cement production plant.

(4)[(y)] All real or personal property belonging to an International Banking Institution that has been duly licensed under sections 231-231y of Title 7.

Appendix B

1991 Puerto Rico Laws
Act No. 80, § 23(f)

Act No. 80

S.B. No. 1057

MUNICIPAL REVENUES COLLECTION CENTER — PROPERTY TAXES — POWERS AND DUTIES

AN ACT to create the Municipal Revenues Collection Center; determine its organization and composition; define its powers and duties; establish the appropriation of funds and public revenues that shall correspond to the municipalities and which shall be subject to collection, control and distribution by the Center; establish a Municipal Revenues Matching Fund; identify the monies that shall be covered into said Fund and the norms for their distribution among the municipalities; provide for the budgetary appropriation of the Center; fix penalties, transfer to the Center the functions and duties of the Department of the Treasury regarding the appraisal, notice of imposition, determination and collection of property taxes, personnel and equipment of the Bureau of Property, Inheritance and Donations Taxes of said Department; and repeal Act No. 139 of June 30, 1966 as amended, known as "Municipal Subsidy Act."

* * *

Appendix B

PR ST T. 21 § 5801

Section 23.—Transitory Provisions.

* * *

(f) Transfers.

All powers, duties and obligations granted by law or regulations to the Department of the Treasury, are hereby transferred to the Center with respect to the appraisal, notice of imposition, assessments and collection of property taxes, no later than June 30, 1993. To the effects of the above provided transfer, and in order to carry out the purposes of this Act, there is hereby transferred to the Center all the personnel of the Bureau of Property Taxes, Inheritance and Donations of the Department of the Treasury who is entitled to retention, in harmony with Act No. 5 of October 14, 1975 as amended, and the applicable Personnel Regulations, and who work in appraisal and imposition of property and real-estate taxes activities; Also, that other personnel of the Department of the Treasury who is needed to achieve the transfer to the Center of the functions and duties relative to the appraisal, imposition and collection of personal and real estate property taxes. The transferred personnel shall keep the same rights and benefits they had at the time of their transfer, as well as the rights and obligations regarding any pension, or retirement system or savings and loan funds. Provided, that the classification and retribution of the positions shall be established in

harmony with the classification and retribution plans applicable to the Center. The retribution shall never be less to that which the employee received at the time of the transfer. This transfer shall take effect July 1, 1992.

Likewise, the Department of the Treasury shall transfer to the Center the programs, funds, obligations, property, equipment, documents, files and any others, related to the appraisal, imposition, assessment and collection of property taxes duties that are needed to attain the purposes of this Act.

The transfers provided in subsection (f) shall be carried out without they being subject to the prohibitions for electoral years contained in any of the acts in effect.

* * *

Appendix B

Puerto Rico Income Tax Act of 1954, P.R. Laws Ann. tit. 13, § 3429 (repealed 1994)

Section 3429. Rules and regulations

(a) Authorization.—

(1) In general.—The Secretary shall prescribe and publish all needful rules and regulations for the enforcement of this subtitle.

(2) In case of change in law.—The Secretary may make such other regulations as may have become necessary by reason of any alteration of law in relation to income tax.

(b) Retroactivity of Regulations or Rulings.—The Secretary may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the income tax laws, shall be applied without retroactive effect.

Appendix B

Puerto Rico Income Tax Act of 1954, P.R. Laws Ann. tit. 13, § 3101 (repealed 1994)

Section 3101. Exemptions from tax on corporations

Except as provided in Supplement U, the following organizations shall be exempt from taxation under this subtitle—

(1) Labor, agricultural, or horticultural organizations;

(2) [Repealed. Act June 1, 1974, No. 51, Part 1, p. 214, § 1, eff. June 1, 1974.]

(3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(4) [Repealed. Act June 1, 1974, No. 51, Part 1, p. 214, § 1, eff. June 1,1974.]

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures [to the benefit of] any private shareholder or individual;

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures [to the benefit of] any private shareholder or individual;

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures [to the benefit of] any private shareholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures [to the benefit of] any private shareholder or individual;

(12) Subject to the requirements of sections 881-909 of Title 5, known as "General Cooperative Associations Act of Puerto Rico", cooperative associations organized and operated under the provisions of such Act;

(13) Subject to the requirements of sections 651-694 of Title 7, known as "Credit Unions Act", credit unions organized and operated under the provisions of such Act;

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this subtitle;

(15) Corporations organized under any Act of the Legislative Assembly, if such corporations are instrumentalities of the Commonwealth of Puerto Rico;

(16) Employee's voluntary and beneficent associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) [to the benefit of] any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses;

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) [to the benefit of] any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon

the teachers' salaries, and income deriving from investments;

(19) Employee's voluntary and beneficent associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (A) admission to membership in such association is limited to individuals who are officers or employees of the Commonwealth of Puerto Rico or any instrumentality or political subdivision thereof or of the United States, its agencies or instrumentalities, rendering services within Puerto Rico, and (B) no part of the net earnings of such association inures (other than through such payments) [to the benefit of] any private shareholder or individual;

(20) Subject to the requirements of section 192 of this title, any institution, college, academy, or school accredited by the Department of Education for the teaching of the fine arts;

(21) Subject to the requirements of Act No. 184, approved May 13, 1948, sections 241 to 251 of this title, sections 252 to 252j of this title, and any other act that may substitute and complement them, and to the extent provided in said acts, the entities that have obtained or may obtain tax exemption under such acts, or subject to the requirements of any other similar act that may be approved hereafter, and the profit and dividend distributions made by such entities;

(22) Any trust which is a part of an employer's bonus-in-shares, annuity, or profit-sharing plan for

the exclusive benefit of its employees or their beneficiaries, and any association of public or private employees which provides similar benefits to its members, if no part of its net earnings inures (other than through payment of said benefits) [FN2] any private shareholder or individual, constituted or organized under the laws of any state of the United States of America, provided said trust or association qualifies as an entity exempt from income tax under the United States Internal Revenue Code.

(23) Any registered investment company or real estate investment trust created or organized under the laws of the United States of America or of any state of the United States of America and qualifying during the taxable year as such registered investment company or real estate investment trust under the Federal Internal Revenue Code; except that the exemption herein provided with respect to real estate investment trusts shall extend only with regard to the interests derived from obligations secured by mortgages on real properties, and to the income resulting or deriving from the financing operations related to said properties such as interests, commissions, charges for services and other analogous concepts and subject to compliance with the requirements of registration and in accordance with the rules and regulations prescribed by the Secretary. The regulations shall include, at least, the following:

(a) rules governing the formation, structure and activities of the trust, as well as the minimum number of shareholders composing it;

(b) rules governing the source and nature of the income of the trust, the location and composition of its assets and in what percentage they shall be owned;

(c) rules governing the treatment and nature of the distributions of the income of the trust to its shareholders;

(d) rules governing the treatment for purposes of the income tax of the trust's shareholders;

(e) rules governing the books and other records that the trust must keep.

(24) Limited Dividends Corporations organized under the laws of Puerto Rico or of any state of the United States of America providing homes for rent to low-or moderate- income families and which qualify as such limited dividends corporations under sections 221 (d)(3) or 236 of the National Housing Act (Public Law 73-479, 48 Stat. 1246, Public Law 90-448, 82 Stat. 476, 498) as amended, when so certified by the Puerto Rico Urban Renewal and Housing Corporation; Provided, That such corporations shall render for each taxable year an income tax return showing specifically the items of their gross income, their deductions, and their net income, and shall add to the return, as a part thereof, a report showing the name and address of each member of the corporation and the amount of dividends paid to each one during said year;

(25) Nonprofit associations providing homes for rent to low- or moderate-income families and which qualify as such under sections 221(d)(3) or 236 of the

National Housing Act (Public Law 73-479, 48 Stat. 1246, Public Law 90-448, 82 Stat. 476, 498), when so certified by the Puerto Rico Urban Renewal and Housing Corporation; (26) Nonprofit associations providing homes for rent to persons over 62 years of age, provided said corporations qualify under section 202 of the Federal Housing Act, as amended (Public Law 86-372, 73 Stat. 654), when so certified by the Puerto Rico Urban Renewal and Housing Corporation.

(27) Subject to the requirements of sections 371-378 of this title, and of any other act substituting or complementing them, and up to the limit provided therein, the entities that have obtained or may obtain tax-exemption under such sections, or subject to the requirements of any similar act to be approved in the future.

(28) Any real estate investment trust created or organized under the laws of the Commonwealth of Puerto Rico. The provisions of this paragraph shall apply only with respect to the interests derived from obligations secured by mortgages on real properties located in Puerto Rico, and to the income resulting or deriving from the financing operations related to said properties, such as interests, commissions, charges for services and other analogous concepts, and in accordance with the rules and regulations prescribed by the Secretary. The regulations shall include, at least, the following:

(a) rules governing the formation, structure and activities of the trust, as well as the minimum number of shareholders composing it;

(b) rules governing the source and nature of the income of the trust, the location and composition of its assets and in what percentage they shall be owned;

(c) rules governing the treatment and the nature of the distributions of the income of the trust to its shareholders;

(d) rules governing the treatment for purposes of the income tax of the trust's shareholders;

(e) rules governing the books and other records that the trust must keep. An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any paragraph of this section on the ground that all of its profits are payable to one or more organizations exempt under this section from taxation. For purposes of this paragraph, the term "trade or business" shall not include the rental by an organization of its real property (including personal property leased with the real property). Regardless of Supplement U, an organization such as described in this section (other than in the preceding paragraph) shall be considered an organization exempt from income tax for purposes of any law making reference to organizations exempt from income tax.

For the loss of the exemption under certain circumstances, in the case of organizations exempt under paragraphs (6) and (22) of this section, see sections 3409and 3410 of this title.

Appendix D

SEAL OF THE
TREASURY DEPARTMENT

July 16, 1976

Mr. Juan Labadie Eurite
Administrator'Seguros de Servicio de Salud
De Puerto Rico, Inc.
P.O. Box 3628
San Juan, Puerto Rico 00936

Subject: Request for tax exemption of Seguros de Servicios de Salud de Puerto Rico, Inc.

Dear Mr. Labadie:

By letter dated June 9, 1971, Fidler, Gonzalez & Rodriguez Law Office, acting as representative of Seguros de Servicio de Salud de Puerto Rico, Inc. (hereinafter SSS), requested this Department to issue a an administrative opinion to exempt this entity from income taxes according to the provisions of Section 101 of the 1954 Income Tax Law, as amended. With this request, we included several documents to support the right of this company to an exemption. Later, you, in your capacity as Executive Director of SSS, submitted a sworn statement on March 7, 1972, for our consideration confirming as correct the information included in said; the exemption request of June 9, 1971, and certifying that if the exemption requested is granted, the benefits the corporation derives will not lead to the benefit of any individual in particular.

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From the information and documentation submitted, the following facts, among others are inferred:

1. SSS is a corporation organized in 1959 as a for-profit corporation, under the General Corporation Law of Puerto Rico and the pertinent provisions of the Insurance Code of Puerto Rico.

2. It is stated in the certificate of incorporation that SSS is a stock company that will engage in the insurance business with the purpose of issuing disability insurance, accident or casualty insurance or the expenses incurred for this reason; long-term disability insurance or any other kind of personal insurance,

3. The request states that, although the purpose of the physicians that organized it never was to operate for profit, the corporation had to be originally organized for profit because the provisions of the Insurance Code because those were the only provisions at that time that gave the opportunity to organize said entity with the speed and flexibility necessary for its operational success.

4. The capital authorized for SSS is 5,000 common stocks with a par value of $100 per share. It issued 1,847 of said stocks which are held by 903 shareholders and not any of the shareholders shall own more than seven shares.

5. The request records that SSS' primary purpose was and is to provide Puerto Ricans with medical-hospital service prepaid insurance plans at a low cost and at the same time establish the right of each patient to choose freely the physician of his preference. That since its beginnings it has eagerly pursued the goal of providing more and better health services to all the Puerto Rican community, being this the reason for its business. Shareholders have always acknowledged that it would be inconsistent with this social purpose to operate to obtain economic gains. That any kind of benefit that may accrue at the end of the year, has been invested to increment its reserves and to keep the insurance premiums as low as possible, all this to be able to enable a great number of citizens to enjoy the services provided by this organization.

It is the opinion of this Department, based on the evidence submitted, that Seguros de Servicios de Salud de Puerto Rico, Inc. will be exempt of paying income taxes under the provisions of Section 101(8) of the 1954 Income Tax Law, as amended if it complies with the following conditions:

1. That the shareholders approve through their vote amendments to the bylaws of the corporation to record in them that:

   a) The corporation will operate as a league or organization with the sole purpose to

promote social well-being without operating for profit.

b) In case stocks are redeemed or liquidated of the dissolution of the corporation, the shareholders will receive assets with a market value not higher than the amount paid when the shares were issued.

c) In case of dissolution any remaining asset surplus, after paying the amounts to the shareholders, will be distributed among non-profit organizations in the health field with the approval of the Health Secretary.

d) Any benefits or surplus of the Corporation will be destined exclusively to:

   (1) Reduce the premiums of the health insurance plan offered by the corporation or to grant on the next year a prorated credit against the health insurance premiums to be paid by the persons that were and continue to be members of the health plan of the corporation.

   (2) Broaden and improve the health services rendered to the plan members.

   (3) Promote educational programs and socioeconomic research within the

health field subject to the prior approval of the Health Secretary.

(4) Create and/or develop low cost health insurance plans subject to the approval of the Health Secretary and the Treasury Secretary.

(5) Increase the reserve requirement to a total of six months of claims. Be it understood, that until they do not reach this reserve level, (i) the revenues of the corporation will be used to increase said reserve up to 2% of the gross annual income for premiums, and (ii) no payment shall be made against the debt for fees accumulated by its participating physicians and dentists during taxable years prior to 1969.

f) Submit annual reports of the specific use of any benefits or surplus to the Treasury and Health Secretaries.

Nothing set forth in this opinion must be understood as we are questioning the applicability of the provisions of Law 152, enacted on May 9, 1942, as subsequently amended, including through Law 109 of 1968. Said law authorizes the organization of non-profit associations to render hospitalization and/or medical-surgical services under the supervision of the Insurance Commissioner of Puerto Rico, and for other purposes.

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Last, we want to point out that the exemption the corporation requests will not exempt it of its obligation to comply with the provisions of the 1954 Income Tax Law, as amended, regarding the retention and payment of contributions in the origin (Sections 141, 143, and 144 of said law) or of the obligation to file Informational Statements (Form 480.6) under the provisions of Section 147 of said law.

Cordially

/s/
Ramón E. Gómez Colón
Sub-Secretary of Treasury

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

Commonwealth of Puerto Rico
TREASURY DEPARTMENT
INTERNAL REVENUE ADMINISTRATION
INCOME TAX BUREAU

Address all
official correspondence to
the Treasury Secretary
San Juan, P.R.

June 28, 1979

Mr. Juan Labadie-Eurite
Administrator
Seguros de Sevicios de Salud
de Puerto Rico, Inc.
P.O. Box 3628
San Juan, Puerto Rico 00936

Subject: Application for Income Tax exemption by Seguros de Sevicios de Salud de Puerto Rico, Inc.

Dear Mr. Labadie-Eurite:

On July 16, 1976, this Department issued an administrative decision providing that Seguros de Sevicios de Salud de Puerto Rico., Inc. ("SSS") would be exempt from income taxes under Section 101(8) of the Income Tax Law of 1954, as amended, subject to compliance with certain conditions therein stipulated.

On March 8, 1979, the SSS through counsel, reported to this Department that for reasons of legal technicalities, it was not possible for SSS to amend it by-laws in the manner contemplated in our

administrative decision of June 16, 1976, and requested that said decision be amended to reflect that fact and that SSS would continue to operate as a non-profit entity, as it always had, under such terms and conditions as this Department may determine.

In light of the information and the grounds submitted, we hereby amend our administrative decision of June 16, 1976, to the effects that:

It is the opinion of this, based on the evidence submitted, that Seguros de Sevicios de Salud de Puerto Rico, Inc., will be exempt from the payment of income taxes under the provisions of Section 101(8) of the Puerto Rico Income Tax Law of 1954, as amended, if it complies with the following conditions:

1. That the Board of Directors and the Shareholder Assembly passes a resolution attesting and binding themselves to the following:

   (a) The corporation will operate as a non-profit league and organization exclusively for the promotion of social welfare without profit.

   (b) The shares of the corporation will not earn dividends whatsoever.

   (c) In the event of redemption of shares, liquidation or dissolution of the corporation, shareholders will receive assets with a market value that is not greater than that paid for the shares when issued.

(d) In the event of liquidation, any surplus over the assets of the corporation, after making payment to the aforementioned shareholders, shall be distributed exclusively to non-profit organizations created and operated in the health care field with the approval of the Health Secretary.

(e) Any corporation benefits and surpluses shall be exclusively destined to:

(1) The reduction of health insurance service premiums provided by the corporation or to grant a credit or extension for next year of health insurance to be paid by persons who were and continue to be participants of said health insurance of the corporation.

(2) Broaden and improve health services that are provided to those insured by it.

(3) Socio-economic education and research related to the field of health, subject to the approval of the Health Secretary.

(4) The creation and/or development of low cost health insurance subject to approval by the Health and Treasury Secretaries.

(5) Increase the six-month reserve requirement on claims. Provided

that, until such reserve level is reached, (i) the profits of the corporation will be devoted to the increase of said reserve until a level of 2% of gross annual income in premiums is reached and (ii) no payments at all will be made against the debt in accrued fees that is owed to participating physicians and dentists during tax years prior to 1969.

(f) Submit annual reports on the specific use of any profits and surpluses to the Health and Treasury Secretaries.

The tax exemption that is hereby granted will be in effect only as long as SSS, its directors and shareholders comply with the hereinabove enumerated conditions.

Last of all, we wish to express that the exemption that is being requested by the Corporation does not release it from the obligation of complying with the provisions of the Income Tax Law of 1954, as amended, in connection with the withholding and payment of taxes at the source (Sections 141, 143 and 144 of said Law), or of the obligation from filing Informative Returns (Form 480.6) under the provisions of Section 147 of the aforementioned Law.

Cordially yours,

(Signed)
Fred H. Martínez
Director

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

[Letterhead] COMMONWEALTH OF PUERTO RICO DEPARTMENT OF THE TREASURY BOX [illegible], SAN JUAN PUERTO RICO [illegible]

June 12, 1987

Fiddler, Gonzalez and Rodriguez
PO Box 3507
San Juan, Puerto Rico 00936

RE: Request for Tax Exemption against Personal and Real Property°of S.S.S. of Puerto Rico Inc. CPM-3

Attention: Atty. Salvador Casellas

Esteemed Sirs:

We are writing in response to your communication of October 28, 1986, in which you request, in representation of Seguros de Salud de Puerto Rico, Inc. (Triple S), an administrative determination to the effect that said entity may enjoy a personal and real property tax exemption, pursuant to what is provided in Act Number 107 of June 28, 1969, Section 551, Subsection (t) (13 L.P.R.A.).

From the submitted information and documentation it follows that:

1. The Triple SSS is an organization that was organized in 1959, with lucrative purposes pursuant to the General Corporations Act of

Puerto Rico and the pertinent provisions of the Insurance Code of Puerto Rico. However, it was the purpose of its founders that the same would operate without profit-making purposes.

2. In 1979, the Board of Directors of Triple S adopted a Resolution, in which among other things, it establishes that said entity from its beginnings has operated without profit-making purposes.

3. Through administrative determinations of July 16, 1976, June 28, 1978 and November 21, 1984, the Department of the Treasury granted income tax exemption under the provisions of Section 101(8) of the Income Tax Act of 1954, as amended, so long as it complied with certain terms and conditions, which were accepted by the Board of Directors in the Extraordinary Meeting of July 20, 1979.

4. Through the sworn certification of January 22, 1987, before Attorney Clara Lopez Baralt, Mr. Rene Rodriguez Garcia, Treasurer of the Triple SSS, declares that said corporation continues to operate without profit-making purposes.

According to the evidence presented and having been granted income tax exemption, the Department of the Treasury finds that over identical foundations it proceeds to grant Seguros de Servicios de Salud de Puerto Rico Inc. (S.S.S.) personal and real property tax exemption, under the same conditions imposed in

the prior administrative determinations. However, we remind them that said exemption will have prospective effect and does not relieve Triple S from the payment of taxes against the property for which obligation arises before fiscal year 1987-1988.

Cordially,

[signature]
Jorge L. Mendín
Subsecretary of the Treasury
[illegible]

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

[Letterhead] – TREASURY – GOVERNMENT OF PUERTO RICO WINNER: TOTAL EXCELLENCE – GOVERNOR AWARD FOR QUALITY IN THE PUBLIC SECTOR 1995-1996

November 6, 1998

Manuel Lopez Zambrana, Esq.
Pierantoni, MÈndez &Alvarez
Banco Popular, Office 901
San Juan, Puerto Rico 00918

Estimado Esq. Lopez:

We refer to your letters dated February 26, 1996 and September 3, 1996 and subsequent communications and meetings in which, on behalf of Triple-S, Inc. ("Triple-S") and other entities described there, you request several rulings under the 1954 Income Tax Law, as amended ("the Law") and the 1994 Internal Revenue Code of Puerto Rico, as amended ("the Code").

Representations and Affirmations

Regarding said request, the following representations and affirmations have been made

1. **Background**

Triple-S was organized as a for-profit corporation in 1959 as a stock insurance company under the Insurance Code of Puerto Rico. Triple-S' main objective is to provide prepaid medical-hospital service plans that are affordable for the Puerto Rican community and allow each patient to freely choose the physician of his preference. Since its

beginnings, by a determination of its shareholders, Triple-S has operated as non-profit organization in accordance with the purposes mentioned. The management of Triple-S as a non-profit entity ensures its shareholders to be persons committed with the philosophy that prompted its creation.

On July 16, 1976, the Treasury Secretary ("the Secretary") issued a ruling ("the Determination") granting Triple-S a tax exemption under Section 101(8) of the Law. The Ruling was amended on June 28, 1979 and November 21, 1984. These amendments have allowed Triple-S to create, among others, the property insurance and life insurance subsidiaries, which will be described later in this letter.

At present, Triple-S owns one hundred percent (100%) of the stocks of these entities: (1) Seguros Triple-S, Inc., a property and contingency insurer; (2) Seguros de Vida Triple-S, Inc. a life insurance company; (3) Interactive Systems, Inc. a company that provides data processing services to Triple-S; and (4) subsidiaries of the previously mentioned. In addition, Triple-S has organized two additional entities: Triple-C, a corporation organized under the 1995 Corporations Law to operate a health services organization under Chapter 19 of the Insurance Code of Puerto Rico and FIANPRI, Inc., an insurance premium financing company. Of these entities, Triple-C, Inc. has not yet started to do business as a health service organization, for it is in the process of obtaining the license necessary to operate as such. Hereinafter all these entities, together, will be

referred to as the "Subsidiaries." The Ruling does not apply to the subsidiaries; therefore, they are not exempted from paying income taxes.

Triple-S has implemented the policy to charge the Subsidiaries for expenses incurred by Triple-S that directly or indirectly benefit, or in any other way are related to Subsidiaries operations. The expenses Triple-S charges to the Subsidiaries represent a portion of the salaries of Triple-S' executives that devote part of their time to the administration, planning and supervision of the operations of the Subsidiaries, in addition to other expenses incurred in said process. The amount of the charges are paid by Triple-S and charged to the Subsidiaries is based on the actual costs incurred by Triple-S in the processes mentioned plus an additional percentage as compensation for its services.

2. **Facts**

Triple-S Management and the Board of Directors have proposed a reorganization plan ("Reorganization") under which they will organize a stock company that is not directly subject to the provisions of the Insurance Company and whose only activity is to own all Triple-S stocks (as it will be restructured as a result of the reorganization, the stocks of the Subsidiaries and of any other entity that may be acquired or organized in the future as a subsidiary of the stock holding company or of any of the Subsidiaries, thus becoming the parent company of these entities. To achieve this objective, the stock holding company will be a for-profit (Triple-S Management Corporation, hereinafter

"Management") created under the 1995 General Corporations Law. Triple-S' current shareholders (the "shareholders") on their part will become Management shareholders.

Once the Reorganization concludes, Management will establish a managerial structure appropriate for these purposes and will adopt a policy to charge to the Subsidiaries the costs Management incurs that directly or indirectly benefit the Subsidiaries, following the same criteria previously used by Triple-S as was previously described.

The reorganization will allow the Triple-S corporate group to face present and future changes in the health field. Besides, through the Reorganization they wish to help Triple-S and its subsidiaries to continue holding the privileged position at the forefront of the insurance industry in Puerto Rico it occupies at present. The Reorganization will allow Triple-S to respond to these changes in a fast, dynamic and efficient manner.

Besides allowing it to respond effectively to the changes in the insurance industry, the Reorganization will allow the Triple-S corporate group to engage in new activities that are consonant with the company vision shareholders established. They have identified future activities in the areas of long-term care, health facilities administration, actuarial services, and medical supplies distribution, among others. The possibility to engage in one of these activities will allow Triple-S corporate group to hold a better position in the health services market.

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3. **Description of the Reorganization**

(a) The first step in the Reorganization will be Triple-S' organization of Triple-S Management Corporation as a for-profit corporation under the 1995 General Corporations Law and Triple-S' transfer of all the Subsidiaries' stocks to this new entity in exchange of the stocks issued by it. Any Triple-S liability or obligation assumed by Management would have been incurred in the normal course of Triple-S' business.

(b) The second step in the reorganization will be the Management's creation of Triple-S Salud as a new disability insurer (as the term is defined in Article 4.030 of the Insurance Code) by stocks under the provisions of the Insurance Code and its capitalization by Management, following the capitalization requirements established by the Insurance Code.

To comply with the capitalization requirements established by the Insurance Code, Management will make a temporary contribution of $450,000 to Triple-S Salud's capital ("the Contribution"). The money Management used to make this contribution came from a loan granted to Triple-S ("the Loan"). Once the Reorganization is finished, Triple-S will return Management the money contributed and Management will pay up the loan granted by Triple-S ("Reimbursement")

(c) The last step to complete the Reorganization will be the merger (the "Merger") of Triple-S in Triple-S Salud under Article 29.460 of the Insurance Code. In the Merger, Triple-S will transfer to Triple-

S Salud the remaining properties, debts and obligations used, or in any other way related to its health insurance business. Any Triple-S debt or obligation assumed by Triple-S Salud will be considered as incurred in the normal course of Triple-S' business. The shareholders that participate in the Merger will swap Triple-S stocks into Management stocks issued for this purposes. Management shares previously issued to Triple-S will not be transferred to Triple-S Salud, for they will be cancelled as part of or immediately after the Merger is completed. In the Merger, the Shareholders will swap more than fifty (50) percent of Triple-S stocks into Management stocks.

Triple-S Salud will engage in exactly the same insurance business Triple-S carried out prior to the Reorganization and with the same operational corporate philosophy of operating non-profit, although for incorporation purposes it was created as a for-profit entity. That is, Triple-S Salud was organized as a by stock insurance company under the provisions of the Insurance Code to continue providing health services in the same way it has been rendering these services up to now.

After the reorganization is effective, Triple-S Salud will change its name to Triple-S, Inc.

It is worth mentioning that before the Reorganization, Triple-S will sell to Management the building where its offices are located (the "Building"). This sale will be for the Building's book value, in exchange of a note, which Triple-S will Transfer to Triple-S Salud as part of the Reorganization.

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Management will satisfy its obligation with this note before June 30, 1999. Triple-S Salud will use the money received from the repayment of the note in its exempt operations exclusively. Triple-S Salud will occupy all or part of the Building and will pay the rental rate under the Code based on arm's length rental payment.

The final result of the transactions described above will be a corporate structure in which the health insurance business previously carried out by Triple-S will be transferred to Triple-S Salud, which, together with the Subsidiaries, will become another Management Subsidiary. The shareholders at the same time will become Management shareholders.

Rulings

Based on what was stated above, this Department issues the following Rulings:

1. Triple-S Salud will be an income tax-exempted organization in accordance with Section 1101(6) of the Code. This exemption will be effective on the day after the date of the Merger and will be subject to Management and Triple-S Salud compliance with the following conditions, as applicable:

    a. Except for the stocks of the Subsidiaries, Triple-S will have to transfer all its assets, liabilities and obligations to Triple-S Salud as part of the reorganization.

    b. Every year, Management, as shareholder of Triple-S Salud and Management shareholders must ratify their interest to

continue with Triple-S Salud tax treatment as a non-profit organization and with the corresponding conditions imposed by this ruling.

Every taxable year, by June 30, Triple-S Salud must file with the Secretary a ratification of the exemption granted by the Determination under the provisions of Section 1101(6) of the Code. Said ratification must cover the previous taxable year and must include the following documents and representations.

i. Copy of the Exempt Organization tax return (Form 480.70) filed the previous year.

ii. Certification of the Secretary to Management Board of Directors and the Secretary to Triple-S Salud Board of Directors of the shareholders ratification to continue with Triple-S' tax treatment as a non-profit corporation.

iii. A sworn statement subscribed by Triple-S Salud's President in which they certify the following representations regarding the previous taxable year:

1. Triple-S Salud operated exclusively to promote social well-being and non-profit with the purpose of providing more and better health services to the Puerto Rican community.

2. Triple-S assets were primordially used for purposes related to its health insurance business. To this purpose, it will be understood that Triple-S was primordially engaged in the health insurance business if

at least 90% of the costs of all Triple-S Salud's assets at the end of the previous taxable year were used for its health insurance business. The term assets used for its health insurance business includes furniture, premiums, accounts receivable and equipment as well as cash and investments in stocks, bonds, notes or any other kind of valuables or instruments admitted to back up the policy reserves (as defined for the purpose of the Insurance Code). Said term also includes any real property owned by Triple-S Salud as long as (1) said property is totally used by Triple-S in the operation of its health insurance business or, (2) if part of this property is rented to Management or to a corporation directly or indirectly controlled by Management (the Subsidiary) at any moment during the previous taxable year, the rental rate for said year is equivalent to the sum of the direct or indirect costs and expenses incurred by Triple-S Salud during said period regarding the title, possession, maintenance and administration of said property (such as depreciation, taxes, repairs, maintenance) attributable to the area occupied by said lessee.

In case that on the previous taxable year Management or the Subsidiary pays Triple-S Salud an amount that exceeds the amount established here as the acceptable rental rate, Triple-S Salud is obliged to return to

Management or the Subsidiary the total of such excess not later than the closing of the following taxable year or by the date established by the Secretary. For the purpose of the Code, Management or the Subsidiary net income or loss will be increased or reduced, as the case may be, to consider the reimbursement required here. The adjustment to Management of the Subsidiary's net income or loss provided here will be effective for the taxable year in which the reimbursement will be made, that is, the year in which the payment in excess was made. If the adjustment to the rental rate allowed is the result of an auditing by the Treasury Department, the reimbursement will paid within 30 days after the date of the notification of said adjustment.

3. The compensation to Triple-S officers and directors was reasonable. The reasonability of the compensation established for Triple-S Salud officers and directors will determined considering the factors that follow, among others: nature of their functions and responsibilities of the position, technical knowledge required, experience in the industry and compensation paid to officers and directors of other companies operating in the insurance industry, the banking industry and other industries whose nature allows to establish a reasonable base for comparison.

4. Triple-S Salud did not distribute to Management.

5. The fees that Triple-S paid to its participating physicians and dentists, who at the same time are Management shareholders, were similar to the fees it paid to the other participating physicians and dentists.

6. Any benefits or surplus of the Corporation will be exclusively destined to one or more of the following:

   i. Broaden and improve the health services rendered to its plan members.

   ii. Contributions to promote social and socio-economic well-being in the health field including, but not limiting to, educational and research entities.

   iii. Increase the operational reserve requirement to an amount equal to six (6) months of claims. To this purpose, the operational reserve will be determined based on the accounting principles allowed by the Insurance Commissioner and as reported in the annual statements submitted to the Insurance Commissioner Office.

d. By June 30 of each year, Triple-S must file with the Secretary a report stating the combined increase of the fees approved by Triple-S Salud Board of Directors for participating physicians and dentists for the

previous taxable year. The report must include an explanation of the factors used to establish said increase, among others:

i. Increase in the costs of medical and hospital services in Puerto Rico.

Index of health services costs for all families in Puerto Rico

Fees paid to physicians and dentists in the insurance industry whose nature allows to establish a base for reasonable comparison; and,

Any other factor deemed relevant.

e. Not later that June 30 of each year, Triple-S Salud must submit a report stating the percentage of change in the premiums collected from the plan members the Board of Directors approved for the Health Plan members, with an explanation of the factors that motivated said change.

f. Triple-S Salud must submit to the Secretary, by June 30 of each year, annual reports on the specific use of any earnings and surplus.

If while the tax exemption ruling issued to Triple-S Salud under Section 1101(6) of the Code, Triple-S Salud is liquidated, the maximum amount that Management can receive in the distribution of the liquidation of its stocks in Triple-S Salud will be limited to an amount equal to its base of Triple-S Salud stocks. No revenue or loss will be

acknowledged by Triple-S Salud or by Management in said liquidation. Triple-S Salud net assets left after the previously mentioned distribution to Management will be exclusively distributed to one or more charitable health entities or to the Government of Puerto Rico to be used in health programs, subject to the applicable laws and regulations.

Triple-S Salud may opt not to be subject to the previous paragraph. If it does not opt for the terms of the previous paragraph: (a) the total to be distributed to Management in the liquidation of Triple-S Salud will not be subject to the conditions described in the previous paragraph; (b) the provisions of Section 2(b)(6) of the Code will not apply to the profit obtained by Management in the liquidation of Triple-S Salud up to the total of the profits and earnings accumulated to the date of the liquidation; (c) the total earned in the distribution of real property will be the fair market value of the property received and will not decrease by the part of said distribution duly attributed to said profits and earnings accumulated to the date of the liquidation and will be acknowledged as profit the amount in which the value exceeds the cost of the property received and; (d) no revenue shall be acknowledged by Triple-S Salud in the distribution of the properties in liquidation. The option provided here must be exercised by Triple-S Salud and notified to the Secretary, through a sworn statement, not less than sixty (60) days prior the liquidation of Triple-S Salud or on any other date set by the Secretary.

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If before Triple-S' liquidation, the Secretary revokes the exemption issued to Triple-S Salud under the provisions of Section 1101(6) of the Code or if Triple-S waives said exemption, then: (a) the total of the earnings and profits accumulated by Triple-S at the date of the revocation or waiver may not be distributed to Management as ordinary dividend or in liquidation of its shares in Triple-S Salud and (b) once Triple-S Salud is liquidated, the earnings and profits accumulated to the date of the revocation or the waiver have to be exclusively distributed to one or more health charitable entities of to the Government of Puerto Rico, to be used in health programs, subject to the applicable laws and regulations. To this purpose, the exemption issued to Triple-S will be considered revoked if Triple-S is the assignor or the assignee in a corporate reorganization and said reorganization is carried out without the prior consent of the Secretary.

Triple-S Salud may opt not to be subject to the terms of the previous paragraph, If this is its option, then: (a) the total of the previously mentioned earnings and profits will be understood to be distributed to Management at the end of the taxable year in which the option is effective; (b) the amount of profits and earnings treated as distributed to Management: (i) will be acknowledged as gross income by said entity, (ii) will reduce the earnings and profits accumulated by Triple-S Salud, (iii) will be treated as received by Management and immediately contributed to Triple-S Salud's capital and, (iv) increase Management stock base in Triple-S Salud; (c) the provisions of Section 1026 of the Code will not be applied to the

total gross income acknowledged by Management as provided here; and, (d) any dividend distribution or liquidation of Triple-S Salud made after the taxable year on which the option is effective will be subject to the rules provided by the Code for ordinary distributions and distributions in liquidations, as applied to Triple-S Salud and Management. The option provided here will be exercised and notified to the Secretary through a sworn statement, not later that the closing of the taxable year in which the revocation or waiver will be effective.

Triple-S Salud Articles of Incorporation will be amended to establish that it will operate to improve health services provided to the Puerto Rican community and to promote social well-being.

The Contribution, the Loan and the Reimbursement will be treated as transitory transactions that do not have any tax impact under the Law and the Code. Therefore, the previously mentioned transactions will not be treated as a dividend distributed by Triple-S or Triple-S Salud and will not affect the exemptions said entities have under Section 101(8) of the Law and Section 1101(6) of the Code, as applicable.

The exemption acknowledged here will be in effect only while Triple-S Salud, its directors and shareholders comply with the conditions previously detailed.

We did not issue any opinion regarding the tax treatment that will be given to the transactions mentioned under other provisions of the Code or the Rule that may be applied to them, or regarding the

tax treatment of any existing or resulting conditions of the transactions that are not completely covered by the opinion herein issued. This opinion will only be valid if the facts submitted to our consideration continue to exist and that there are not additional facts that may result in a different opinion.

Remember, the Treasury Department is here to serve you.

Cordially,

[signature Xenia Velez Silva]

Xenia Velez Silva

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

[Letterhead] – MUNICIPAL REVENUE
COLLECTION CENTER
CRIM
INVEST IN YOURSELF!

December 15, 1998

Mr. Pedro Vidal Cordero
Partner
Fiddler González & Rodriguez
P.O. Box 363507
San Juan, Puerto Rico 00936-3507

RE: TRIPLE-S SALUD TAX EXEMPTION REQUEST

Dear. Mr. Vidal:

In reference to your letter dated November 16 of this year where you request us to acknowledge the rights acquired by Triple-S under article 291(t) of the 1902 Political Code, as amended, through certain ruling issued by the Treasury Department on June 12, 1987, and keep it in effect, in conformity with article 7.03 of the Property Tax Law of August 30, 1991, as amended, under article 5.01 of said law, with regard to Triple-S Salud, Inc.

On June 12, 1987, Triple-S received a ruling from the Treasury Secretary stating that it qualified for the Movable and Real Property tax exemption provided by article 291(t) of the Political Code. In this ruling the Treasury Secretary established a series of terms and conditions such as:

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1. Triple-S, Inc. must operate non-profit.
2. The Triple-S Inc. must not accrue dividends of any kind.
3. In case of redemption, liquidation or dissolution the shares will not realize any economic benefit
4. Any earnings or surplus of Triple-S will be destined to public or social purposes.

In your letter you establish that Triple-S has plans to organize a new entity, Triple-S Salud, Inc., under the laws of Puerto Rico. As Triple-S Salud Inc. will be a non-profit organization that will engage in the sale of prepaid medical and hospital services plans. On the other hand, it is established in your communication that Triple-S will transfer to Triple-S Salud the activities Triple-S, Inc has been carrying out. You also indicate that Triple-S Salud, Inc. will operate under the same precepts established by the Treasury Secretary for Triple-S, Inc., which were previously described.

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Therefore, based on everything we have previously stated and based on the knowledge that the circumstances of Triple-S, Inc. and Triple-S Salud are identical, the CRIM has ruled that the rights acquired by Triple-S, Inc. will continue in effect under article 5.01 of the law for Triple-Salud, Inc.

Cordially,

[signature]
Manuel O. Velázaquez
Director
Operational Services
grd

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE

Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

FINAL AGREEMENT

UNDER SECTION 6126 OF THE 1994 INTERNAL REVENUE CODE, AS AMENDED

This final agreement, subscribed in quadruplicate pursuant to section 6126 of the 1994 Internal Revenue Code, as amended (the "Code") between the Honorable Juan A. Flores Galarza, Treasury Secretary of the Commonwealth of Puerto Rico (the "Secretary") and the other party Triple-S, Inc. ("Triple-S"), represented herein by Socorro Rivas Rodriguez in her capacity as President of Triple-S and Triple-S Management Corporation ("Management") represented herein by Ramón Ruíz Comas in his capacity as President of Management.

WHEREAS: The parties assure they have the legal capacity to enter this Final Agreement.

WHEREAS: Triple-S is a stock for profit n insurance company organized under the Insurance Code of Puerto Rico ("The Insurance Code").

WHEREAS: Triple-S has common stocks issued an in circulation and has the authority and legal capacity to distribute dividends on said shares.

WHEREAS: except for the shares ceded to the members of the Board of Directors, as required by the Insurance Code, Management owns all of Triple-S shares.

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WHEREAS: Management is a stock for profit corporation organized under the laws of the Commonwealth of Puerto Rico.

WHEREAS: Management has common stocks issued and in circulation and has the authority and legal capacity to distribute dividends on said common stocks.

WHEREAS: Triple-S and Management use the calendar year as their taxable year under the Code.

WHEREAS: on July 16, 2976 the Treasury Department ("the Department") issued a ruling (as amended by the rulings issued by the Department on June 28, 2979 and November 21, 1984) to grant Triple-S predecessor entity ("previous Triple-S) an income tax exemption under section 101(8) of the 1954 Income Tax Law, as amended ("1954 Law"), subject to compliance with the conditions established there ("1976 Ruling")

WHEREAS: the exemption established in the 1976 ruling began on July 1, 2979.

WHEREAS: Previous Triple-S was a stock for profit insurance company organized under the Insurance Code.

WHEREAS: Previous Triple-S had common stocks issued and in circulation and had the authority and legal capacity to distribute dividends on said shares.

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WHEREAS: Previous Triple-S used the calendar year as its taxable year under the 1954 Law and the Code.

WHEREAS: prior the 1976 Determination be in effect, Previous Triple-S was subject to income taxes under the 1954 Law and accumulated earnings and profits during this time.

WHEREAS: as part of a corporate reorganization made by Triple-S and Triple-S Management in 1999 ("the reorganization"), Previous Triple-S merged in Triple-S ("the merger") under Article 29.460 of the Insurance Code.

WHEREAS: as a result of the Merger, Triple-S assumed all the rights and obligations related to the health insurance business carried out by the Previous Triple-S.

WHEREAS: on November 6, 1998 the Department issued a ruling to Triple-S ("thc 1998 Determination"), which established an income tax payment exemption for Triple-S under section 1101(6) of the Code subject to Triple-S' compliance with the conditions established in it.

WHEREAS: section 1101(6) of the Code derives from Section 101(8) of the 1954 Law.

WHEREAS: in another administrative ruling issued on November 6, 1998, The Department determined that the Merger qualified as

an exempt reorganization under section 1112 (g)(1)(A) of the Code.

WHEREAS: for the purposes of the 1954 Law and the Code all the profits and earnings of Previous Triple-S accumulated by the date of the Merger were transferred to Triple-S as part of the Merger and are part of the profits and earnings accumulated by Triple-S by December 31, 2002 ("Total Profits and Earnings").

WHEREAS: the Total Profits and Earnings include profits and earnings accumulated by the Previous Triple-S and Triple-S between July 1, 2979 and December 31, 2002 for the amount of $132,763,434.00 ("the Exempt Profits and Earnings")

WHEREAS: the Secretary has investigated the exemption granted to Triple-S in the 1998 Ruling.

WHEREAS: on the letter of July 31, 2003, the Secretary notified ("the Notice") to Triple-S and Management that (i) the new public policy the Department had adopted when interpreting the scope of section 1101(6) of the Code is that said section only covers entities organized as non-profit entities, (ii) in conformity to the public policy described, the Secretary cannot continue treating Triple-S as an entity covered under section 1101(6) of the Code, for it is organized as a stock for profits entity

even when Triple-S and Management comply with the conditions established in the 1998 Ruling to be able to enjoy the exemption granted there, (iii) as of December 31, 2002, the 1998 Ruling will be discontinued and, therefore it will not be in effect for tax years beginning after December 31, 2002, and (iv) in view that Triple-S is a for profit corporation and has profits and earnings that have been accumulated over the periods in which the company and its predecessor received the tax exemption under the Code and the 1954 Law, there proceeds the imposition of taxes on said profits and earnings since they are available for the distribution of dividends and the contribution will be imposed allocating the profits and earnings described as a dividend to Management.

WHEREAS: according to what was established in Circular Letter 99-01 issued by the Department, a ruling issued to a taxpayer may be discontinued by the Department if the interpretation of the Code made by the Department at the moment of the approval has been subsequently modified or changed.

WHEREAS: the income tax amount that by the date of this Final Agreement Triple-S has estimated it would it would have to pay

for the 2003 taxable year if the 1998 Ruling is not in effect for said period would be approximately $15,000,000.00.

WHEREAS: the income tax amount that Triple-S would finally have to pay for the 2003 taxable year if the 1998 Ruling will depend on the net income it generates for said taxable year.

WHEREAS: the Secretary acknowledges that for the sole purpose of satisfying the income tax amount the Secretary will impose to Management as a result of the Notice and what was agreed in this Final Agreement, Triple-S will distribute to Management a dividend for an amount to cover all or part of said contribution.

WHEREAS: the purposes of this Final Agreement is to establish and agree on the taxable years covered by the Ruling, Triple-S tax treatment under the Code as a result of the Department's ruling to discontinue the 1998 Ruling, the treatment of Total Profits and Earnings, the treatment of Exempt Profits and Earnings and other related issues.

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WHEREAS, IT IS DETERMINED, ACCEPTED AND AGREED the following:

1. The Secretary ruled and, as a result of said ruling, Triple-S accepts that the 1998 Ruling will be discontinued as of December 31, 2002 and, in consequence, will not apply to taxable years after December 31, 2002.

2. The Secretary rules and, as a result of said ruling, Triple-S accepts that for the taxable years after December 31, 2002, Triple-S will not be tax-exempted under section 1101(6) of the Code and will be subject to income tax under the corresponding provisions of Sub-chapter G of the Code.

3. The Secretary rules and, as a result of this ruling Triple-S accepts that the income tax amount Triple-S will be obliged to pay for the 2003 taxable will depend on the net income it generates on this taxable year and the tax thus determined will be paid in total on the date established on paragraph 7(b) of this Final Agreement.

4. The Secretary rules, and as a result of said ruling, Triple-S accepts that for the taxable year beginning on January 1, 2003 -S will not be subject to the requirement of submitting to the Secretary a tax return and an estimated income tax payment established in section 1062 of the Code.

5. The Secretary determines and Triple-S accepts that being Triple-S a for-profit corporation, the Total Profits and Earnings constitute "profits and earnings" of Triple-S within the scope of section 1119

of the Code and that said Total Profits and Earnings may be distributed as dividends.

6. The Secretary rules and, as a result of this ruling, Management accepts that being Triple-S a for-profit corporation and the owner of the Total Profits and Earnings, Management must pay as a part of this Final Agreement a tax determined under the following rules and with the effects herein detailed: (i) Exempt Profits and Earnings will be treated as distributed by December 31, 2003 as a dividend ("the imputed dividend") by Triple-S to Management, (ii) Management will be subject to income tax on the Imputed Dividend and will not claim the credit under section 1026 of the Code on Imputed Dividends, (iii) the total taxes on the Imputed Dividend to be paid by Management will be %51,773,839.00 (the "Tax on Imputed Dividend"), (iv) the Tax on Imputed Dividend will be paid by Management, as established in paragraph 7(a) of this final Agreement, (v) Triple-S Total Earnings and Profits will be reduced in an amount equal to the Imputed Dividend, (vi) Management will be treated as if it has contributed to Triple-S capital in an amount equal to the Imputed Dividend and will increase its Triple-S stock base in an amount equal to said amount, (vii) the requirement of the Code that Management includes the Imputed Dividend as gross income and includes it in the income tax return for taxable year beginning on January 1, 2003 shall be given as fulfilled when it enters this Final Agreement and pays Taxes on the Imputed Dividend as established on paragraph 7(a) of this Final Agreement, (ix) Management profits and earnings,

within the meaning of section 1119 of the Code, will increase in an amount equal to the Imputed Dividend, and (x) any distribution of its proits and earnings made by Management, as increased by the Imputed Dividend, will qualify as a dividend and will be subject to income taxes under the applicable rules of the Code.

7(a) The Secretary determines and, Management accepts, that the Tax on Imputed Dividend will be paid as follows:

– on the date of the Final Agreement
$37,000,000.00

– April 15, 2004
$14,773,839.00

7(b) The secretary determines and Triple-S accepts that the amount of income taxes Triple-S is obliged to pay for the 2003 taxable year (estimated in $15,000,000 and to be determined as established in and, subject to, what is provided in paragraph 3 above) will be totally paid on April 15, 2004.

8. The Secretary rules and, as a result of said ruling, Triple-S accepts that any distribution Triple-S Management makes to cover the payment of the Tax on Imputed Dividend will not be considered a dividend for the purposes of the Code, but as a reduction of Management base stock in Triple-S, as increased by the Imputed Dividend under paragraph (6) above.

9. The Secretary rules and, as a result of said ruling, Triple-S accepts that any distribution of dividends by Triple-S to Management, after the

execution of this Final Agreement, of the end balance of the Total Profits and Earnings, as reduced by the Imputed Dividend and of the profits and earnings generated after December 31, 2002, will qualify for the treatment established in Section 1026 of the Code.

10. In accordance with Section 6126 of the Code the parties agree that the matters herein agreed will final and conclusive except if fraud, deceit or false representation of an important fact is shown.

IN WITNESS WHEREOF, the parties sign this Final Agreement on July 31, 2003.

TREASURY SECRETARY
TREASURY
DEPARTMENT

[signature Juan A. Flores Glarza]
By:

TRIPLE-S, INC.

[signature Socorro Rivas
By:

TRIPLE-S MANAGEMENT
CORPORATION

By: [signature
Ramón Ruíz Comas]

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

SEAL OF THE
TREASURY
DEPARTMENT

CPA Juan A. Flores Galarza
Secretary

July 31, 2003

Mr. Ramón Ruíz
President
Triple-S Management
PO Box 363628
San Juan, PR 00936-3628

Mrs. Socorro Rivas
President
Triple-S Inc.
PO Box 36362
San Juan, PR 00936-3628

Dear Mr. Ruíz and Mrs. Rivas:

Through this letter we want to notify and confirm what was said at meetings held on June 18, 2003 and July 8, 2003 between the Treasury Department representatives and Trip-S, Inc. ("Triple-S") about the decision of the Treasury Department to discontinue, as of December 31, 2002, the ruling ("the Ruling") issued to Triple-S on November 6,

1998 under section 1101(6) of the 1994 Internal Revenue Code, as amended ("The Code").

At these meetings we informed and confirmed that the new public policy adopted by the Treasury Department and interpreting the scope of section 1101(6) of the Code is that this section only covers entities organized for non-profit purposes and in conformity with the public policy described in section 1101(6) of the Code, the Secretary cannot continue to treat Triple-S as an entity described in section 1101(6) of the Code, even when Triple-S and Management comply with the conditions of the ruling to enjoy the exemption granted by it. Therefore, the Department notifies you that for taxable years after January 1, 2003, the Ruling will not be in effect and Triple-S will be subject to income tax under the Code.

As a result of what was previously stated, we also notify that in view that Triple-S is a for-profit corporation and has earnings and profits that have been accumulated during the periods in which the company and its predecessor were granted the tax exemption under the Code and the 1954 Income Tax law, as amended, there proceeds the imposition of taxes on said earnings and profits, for they are available for distribution of dividends. The contribution will be imposed imputing the earnings and profits described and a dividend to Triple-S Management Corporation.

This notice is made with the rules established in Circular Letter 99-01, which provides that a ruling issued to a taxpayer may be revoked by the

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Department if the interpretation of the Code followed by the Department at the moment of the approval has been subsequently modified or changes.

Cordially,

[signature Juan A. Flores Galarza]
Juan A. Flores Galarza

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix D

[Letterhead] CRIM MUNICIPAL REVENUE COLLECTION CENTER
Commonwealth of Puerto Rico
Norman E. Foy, CPA
Executive Director

February 1, 2006

Mr. Ramón Ruíz
President
Triple-S Management
PO Box 363628
San Juan, PR 00936-3628

Esteemed Mr. Cruz:

As you are aware, the Final Agreement[1] pursuant to the provisions of the Section 1626 of the Internal Revenue Code of Puerto Rico (1994), between Triple S Management, its affiliates (Triple S) and the Puerto Rico Department of the Treasury, to revoke the

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[1] Agreement dated July 31, 2003, pursuant to which the Treasury Department ("Treasury") imputed a dividend equal to the amount of utlities and benefits ("retained earning") accumulated by Triple S, Inc. as of December 31, 2002, attributable to the exemption periods pursuant to the Treasury determinations (Imputed Dividend). Accordingly, Management paid a $37,000,000 tax over the imputed dividend as of the date of the agreement, and it agreed to pay the income tax for the natural year 2003 in the amount of $14,773,839 on April 15, 2004.

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November 6, 1998 administrative determination and provide for the payment of the income tax, did not include real and personal property taxes for which reason the Municipal Revenue Collection Center (CRIM) was not a party to the same.

For this reason, the CRIM commenced an investigation into the reach of the administrative determination emitted on December 15, 1998 in favor of Triple S Salud, Inc. After conducting the corresponding analysis we have decided to revoke said determination retroactively to the date of the CRIM's creation[2].

As a result of this revocation, Triple S's obligation with respect to the personal property tax will begin from the tax return of natural year 1991; with respect to the real property tax, it will be in effect from fiscal year 1992-1993 onward.

Our decision is based on the fact that compliance on the part of Triple S and/or its successors with the conditions imposed by the Treasury Department through its various administrative determinations did not have the effect of transforming them into not-forprofit entities. That being the case, the 1987 administrative determination by the Treasury Department and the 1998 determination of the CRIM to grant an exemption to Triple S by virtue of the dispositions of the Article 291(t) of the Political Code of 1902 and the Article 5.01(g) of the Act 83

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[2] Act 80 of August 30, 1991, 21 L.P.R.A., Secs. 5801, *et seq.*

were erroneous and did not generate any right in its favor.

By copy of this letter to Mrs. Robin Garland, Sub-director in charge of Administration, Finances and Operations, I request the corresponding payments from the abovementioned dates.

Cordially,
[signature]
Norman E. Foy

cc: Mrs. Robin Garland, Executive Sub-director
Edwin Ortiz Pietri, Esq. Legal Division Director.

CERTIFIED TRANSLATION
I CERTIFY THIS TO BE A CORRECT
TRANSLATION OF ITS ORIGINAL IN THE
SPANISH LANGUAGE
/s/
Noel Zamot
CERTIFIED COURT INTERPRETER-TRANSLATOR
BY THE ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS

Appendix E

DEPARTMENT OF THE TREASURY

April 21, 1986

Circular Letter 86-3

Subject: Procedure for the request and issuance of rulings and administrative determination letters.

It is the practice of the Puerto Rico Department of the Treasury (hereinafter, the "Department") to answer inquiries of taxpayers and other interested parties, whenever appropriate in the interest of sound tax administration, as to the tax effects of their acts of transactions. This circular letter establishes the general procedure to be followed for the issuance of formal responses to those inquiries.

Rulings and Administrative Determination Letters

A ruling or written statement interpreting and applying the tax laws to a specific set of facts will be issued to a taxpayer or his authorized by the Department to be of general interest, the ruling will be also issued as an administrative letter for public release.

Rulings and administrative determination letters are official interpretations by the Department as to the application of the tax laws on the acts or transactions represented by the taxpayer. They are issued only by the Secretary or by the person upon whom he may delegated.

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Matters Subject to Rulings

Rulings will be issued only on prospective transactions and on transactions completed prior to the filing of the return on which the transaction is required to be reported. A ruling will not be issued on an issue with respect to the return of a taxpayer under active examination or audit by the Department.

In determining the issues upon which a ruling will be issued the following criteria will apply:

1. A ruling will not be issued on alternative plans of proposed transactions or on hypothetical situations.
2. If the ruling request presents an issue the response to which is readily discernible from an application of the law to the facts described, the ruling will be issued.
3. If the ruling request presents an issue the response to which is reasonably certain, but not entirely free from doubt, a ruling will be issue only if it is established that a business emergency requires a ruling or that unusual hardship will result from failure to obtain a ruling.
4. If the ruling request presents an issue the response to which cannot be reasonably resolved prior to the issuance of regulation, a ruling will not be issued unless it is established that a business emergency requires a ruling or that unusual hardship will result from failure to obtain a ruling.

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In any case in which the taxpayer believes that a business emergency exists or that an unusual hardship will result form failure to obtain a ruling, he should submit a separate letter with the request for ruling setting forth the facts necessary for the Department will not deem a "business emergency" to exist if it such as, for example, scheduling within an inordinately short period of time the closing date for a transaction or a meeting of the board of directors or the shareholders of a corporation.

Notwithstanding the foregoing, there may be certain areas where, because of the inherently factual nature of the problems involved or for other reasons, the Department will not issue advance rulings or administrative letters. The Department will advice taxpayer from time to time the areas within the scope of this exception.

Filing A Request For A Ruling

A request for a ruling is to be submitted in duplicate. If submitted in English, a Spanish translation must accompany the ruling request.

Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts are to include the names, addresses and taxpayer identifying numbers of all interested parties; a full and precise statement of the business reasons for the transaction; and, a carefully detailed description of the transaction. In addition, true copies of all contracts, wills, deeds, agreements, instruments and other documents involved in the transaction must be submitted. All relevant facts

reflected in the documents submitted must be included in the taxpayer's statements and not merely incorporated by reference, and must be supported by an analysis of their bearing on the issue or issues covered by the ruling request.

If the ruling request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction.

The taxpayer should also submit drafts of the ruling proposed to be issued and, if requested by the Department, a draft of the administrative determination.

A taxpayer who wants to have a conference on the issues involved should indicate this in writing when, or soon after, filing the request.

Material facts furnished to the Department by telephone or orally at a conference must be promptly confirmed by letter to the Department. Because the purpose of these procedure is to speed up the ruling and determination letter process the taxpayer is encouraged to submit the required relevant material within 20 calendar days. If the Department is not notified of problems in meeting the 20-days period, the request will be processed under the assumption that no further information will be received.

If the taxpayer advocates a particular conclusion, an explanation of the grounds for the assertion must be furnished, together with a statement of relevant authorities in support of the taxpayer's views. In addition, the taxpayer is encouraged to inform the

Department and discuss the implication of any legislation, tax treaties, court decisions, regulations revenue rulings an administrative letters that the taxpayer determines to be contrary to the position advanced. If the taxpayer determines that there are no contrary authorities, a statement to this effect would be helpful in the ruling request. Identification and discussion of contrary authorities will generally enable the Department personnel to arrive more quickly at a full understanding of the issues and the relevant authorities. Conversely, failure to disclose and distinguish significant contrary authorities may result in requests for additional memoranda that will delay action in the ruling request.

If before filing a return a taxpayer receives a ruling about any transaction that has been consummated and that is relevant to the return being filed, he should attach a copy of the ruling or determination letter to the return when it is filed.

Effective as of the date of this circular letter, at the close of the ruling request the following oath should be presented by the taxpayer or his representative:

> "Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct and complete, and that the issue(s) contained therein are not being considered by the Puerto Rico Treasury Department in connection with an

> active examination or audit of a tax return of the interested parties."

If the above oath is executed by a representative of the taxpayer, the ruling request must be accompanied by a duly executed power of attorney, unless the representative is either an attorney who is a member in good standing of the bar if the Commonwealth of Puerto Rico or a certified public accountant who is licensed to practice in the Commonwealth of Puerto Rico. Nor is the requirement to submit a duly executed power of attorney applicable to an individual representing his full-time employer or to a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or other organized group.

Processing a Ruling Request

It is the practice of the Department to process requests for rulings in the order received and as expeditiously as possible. Compliance with petitions for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters under consideration by this Department. Petitions for processing a ruling request ahead of the regular order, made in writing in separate letter submitted either with the request or subsequent thereto and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. No assurance can be given, however, that any ruling will be processed by the time requested.

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Oral Advice to Taxpayers

The Department does not issue rulings upon oral upon oral requests. Furthermore, officials and employees of the Department ordinarily will not discuss a substantive tax issue with a taxpayer o his representative prior to the receipt of a written request for a ruling. A taxpayer or his representative, however, may inquire as to whether the issue involved in a transaction is one in which a ruling will be issued.

A taxpayer may, of course, seek oral technical assistance from an official or employee of the Department in the preparation of his return, pursuant to other established procedures. Such oral advice is advisory only and the Department is not bound to recognize is in the examination of the taxpayer's return.

Effects of Rulings

A ruling issued by the Department will generally be binding on the Department as long as the representations upon which the ruling was based reflect an accurate statement of the material facts with respect thereto and the transaction was actually carried out substantially as proposed.

A taxpayer may not rely on a ruling issued to another taxpayer.

A ruling or administrative determination found either to have been issued in error or is not in accord with the current views of the Department may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the

ruling was issued or by publication of an administrative determination, circular letter or other publicized form. Except in rare or unusual circumstances, the revocation or modification of a ruling or administrative determination will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to an interested party whose tax liability was directly involved in that ruling, or to the taxpayer who can demonstrate that the transaction entered into was done upon reliance of the administrative determination, if:

1. The ruling or administrative determination as originally issued with respect to the transaction undertaken.
2. The facts of the transaction are not materially different from the facts on which the ruling or administrative determination was based.
3. There has been no change in the applicable law.
4. The taxpayer acted in good faith in reliance upon the ruling or administrative determination and the retroactive revocation or modification would be to his own detriment.

In the event of a change in applicable law, if the above other three conditions are met, the revocation will be applicable from the date that the change takes place.

Noncompliance with Provisions of Circular Letter

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If a request for a ruling or determination letter does not comply with all the provisions of this Circular Letter the request will be acknowledged, and the requirements that have not been met will be pointed out. If a request for a ruling lacks essential information, the taxpayer will be told that if the information is not received within 30 calendar days, the request will be closed. If the information is received after the request is closed, it will be reopened and treated as a new request as of the date essential information is received.

Specific Guidelines

Specific guidelines for requesting rulings under certain provisions of the various tax acts will be issued by this Department. These guidelines should also be followed by taxpayers or their representatives when requesting rulings under such tax acts.

Juan Agacto Alices
Secretary of the Treasury

Appendix E

March 3, 1999

Circular Letter 99-01

Subject: **Procedure for the request and issuance of Rulings and Administrative Determination Letters.**

It is the practice of the Puerto Rico Department of the Treasury (Department) to answer inquiries of taxpayers and other interested parties, whenever appropriate in the interest of sound tax administration, as to the tax effects of their acts or transactions. This Circular Letter establishes the general procedure to be followed for the issuance of formal responses to those inquiries.

Section 1. Rulings and Administrative Determination Letters

Rulings and administrative determination letters are official interpretations by the Department as to the application of the Code, or any other tax law, to the acts or transactions represented by the taxpayer. The rulings and administrative determinations are issued by the Secretary or his authorized representative.

A ruling or written statement will be issued to a taxpayer or his authorized representative interpreting and applying the Puerto Rico Internal Revenue Code of 1994, as amended (Code), or any other tax law, to a specific set of facts. A letter ruling includes the written permission or denial of permission by the Puerto Rico Treasury Department to a request for a change in a taxpayer's accounting method or accounting period. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in

section 6 of this Circular Letter, unless it is accompanied by a closing agreement.

If the issue covered by the ruling is understood by the Department to be of general interest, the ruling will be also issued as an administrative letter for public release. Such release will take place not earlier than six months after the issuance of the opinion. The administrative determination letter will not set forth the name of the taxpayers mentioned in the opinion. The Department will determine at its discretion which opinions will be published.

Section 2. Matters Subject to Rulings

A. In general. The Puerto Rico Treasury Department issues letter rulings on matters arising under the Code and related statutes and regulations that involve:

1. the time, place, manner, and procedures for reporting and paying taxes;
2. the assessment and collection of taxes (including interest and penalties);
3. the abatement, credit, or refund of an over assessment or overpayment of tax; or
4. the filing of information returns.

Rulings will be issued only on prospective transactions and on completed transactions if the ruling request is submitted before the due date for filing the return on which the transaction is required to be reported, subject to the following limitations.

B. Circumstances under which a letter ruling is not ordinarily issued. (1) The Puerto Rico Treasury Department ordinarily will not issue a letter ruling if, at the time the letter ruling is requested, the identical issue is involved in the taxpayer's return for an earlier period and that issue:

(i) is being examined by the Fiscal Audit Bureau;

(ii) is being considered by the Assistant Secretary for Appeals;

(iii) is pending in litigation in a case involving the taxpayer or a related taxpayer;

(iv) has been examined by the Fiscal Audit Bureau or considered by the Assistant Secretary for Appeals and a closing agreement covering the issue or liability has not been entered into.

If a return involving an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the Puerto Rico Treasury Department will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or an examination of the identical issue on an earlier year's return has been started. But, even if an examination has begun, the Department ordinarily will issue the letter ruling if the Assistant Secretary for Internal Revenue Area agrees, by memorandum, to the issuance of the letter ruling.

The Department will not issue a ruling to business, trade or industrial associations or to similar groups concerning the application of tax laws to members of

the group. The Department, however, may issue rulings to groups or associations on their own tax status or liability if the request meets the requirements of this Circular Letter.

The Puerto Rico Treasury Department will not issue letter rulings on a matter involving the Puerto Rico consequences of any proposed federal, Puerto Rico, state, local, municipal, or foreign legislation. The Department, however, may provide general information in response to an inquiry.

A ruling will not be issued on questions involving the validity of the taxes imposed by the Code or any other tax law, questions on the authority or jurisdiction of the Department to enforce the Code or such laws, or to collect information or similar matters.

(2) In determining the issues upon which a ruling will be issued, the following criteria will apply:

(i) is being examined by the Fiscal Audit Bureau;

(ii) If the ruling request presents an issue for which the answer seems clear by applying the statute to the facts or for which the answer seems reasonably certain but not entirely free from doubt, a letter ruling will be issued.

(iii) The Department ordinarily will not issue a letter ruling on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the ruling request, a taxpayer should call the Internal

Revenue Area to discuss whether the Department will issue a ruling on part of the transaction.

(iv) If the ruling request presents an issue the response to which does not seem reasonably certain prior to the issuance of regulations, a ruling will not be issued unless it is established that a business emergency requires a ruling or that unusual hardship will result from failure to obtain a ruling, and the Department determines that the issuance of the ruling is in the best interest of tax administration.

In any case in which the taxpayer believes that a business emergency exists or that an unusual hardship will result from failure to obtain a ruling, he should submit a separate letter with the request for ruling setting forth the facts necessary for the Department to make a determination in this regard.

The Department will not deem a "business emergency" to exist if it results from circumstances within the control of the taxpayer, such as scheduling within an inordinately short period of time the closing date for a transaction or a meeting of the board of directors or the shareholders of a corporation.

Notwithstanding the foregoing, there may be certain areas where, due to the inherently factual nature of the problems involved or for other reasons, this Department will not issue advance rulings or administrative letters. The Department may advise

taxpayers from time to time the areas within the scope of this exception.

Section 3. Filing a Request for a Ruling

A. Filing Fees

Pursuant to the provisions of Act No. 15 of July 20, 1990, (Act No. 15), each request for ruling must be accompanied with the corresponding payment of the fees imposed under said Act and Article 6 of the regulations thereunder, as amended. The ruling request will not be considered filed until the filing fees are received in the Department.

Each ruling request must be submitted to the Internal Revenue Area. Those requests that do not contain all the required information for the issuance of the opinion shall be subject to an additional fee, which must be satisfied at the time of filing the additional information.

According to the regulations under Act No. 15, a separate fee will be applied with respect to each non-related transaction when a request covers several non-related transactions or when there is a change in the original request to add a non-related transaction not appearing in the original request. Nevertheless, the addition of a new aspect related to the same transaction shall not carry the imposition of additional fees, except if this new aspect makes the transaction to be classified in a category or subcategory that imposes a higher fee.

Any request for amendment, clarification or new aspect with respect to a request under consideration having the effect of changing or modifying the

substance or structure of the requested ruling shall be subject to an additional fee. Once the Secretary has issued his ruling, any request for reconsideration, supplementary ruling or amendment shall be subject to a similar fee to the one paid with the original request.

The above mentioned fees must be paid by check or money order payable to the Secretary of the Treasury.

For specific information and details regarding the applicable fees, please refer to our Circular Letters 94-01 and 95-02 and any other circular letter or regulation which in the future substitutes or amends said circular letters.

B. Form and Content

The request for a ruling must be submitted in duplicate. If submitted in English, the Department may require a Spanish translation of the ruling request. The Department will not receive nor consider drafts of a ruling request.

(1) Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts must include:

(i) the names, addresses and taxpayer identifying numbers of all interested parties (The term "interested parties" does not mean all shareholders of a wide held corporation relating to a reorganization or all employees where a large number may be involved.);

(ii) the annual accounting period, and the overall accounting method for maintaining the

accounting books and filing income tax returns of all interested parties;

(iii) in the case of corporations and partnerships, place of incorporation or organization, and whether they are engaged in trade or business in Puerto Rico;

(iv) a description of the taxpayer's business operation;

(v) a full and precise statement of the business reasons for the transaction; and

(vi) carefully detailed description of the transaction.

In addition, true and complete copies of all contracts, wills, deeds, agreements, instruments and other documents pertinent to the transaction must be submitted. All relevant facts reflected in the documents submitted must be included in the taxpayer's statements and not merely incorporated by reference, and must be supported by an analysis of their bearing on the issue or issues covered by the ruling request.

Pursuant to section 2(B)(2)(iii) of this Circular Letter, the Department will not ordinarily issue a letter ruling of only part of an integrated transaction. If, however, under such section the Department may issue a ruling of only part of a larger integrated transaction, the facts, circumstances and all the pertinent information must be submitted with respect to the complete transaction. If the ruling request covers corporate or partnership distributions, reorganizations, liquidations of corporations or partnerships, or a

similar transaction, the request must be accompanied with the most recent audited financial statements of the parties to the transaction.

2. The ruling request shall also set forth:

(i) the names and taxpayers identifying numbers of all members of a controlled group of which the taxpayer is also a member within the meaning of section 1028 of the Code;

(ii) whether such members are engaged in trade or business in Puerto Rico or there is a reasonable expectation that they will be; and whether such members receive income from sources within Puerto Rico or there is a reasonable expectation that they will receive it; and

(iii) any and all ruling, closing agreement, request, recommendation, approval, endorsement letter or similar determination currently pending with the Department in connection with the taxpayer or members of a controlled group of which the taxpayer is also a member within the meaning of section 1028 of the Code.

The foregoing information shall be submitted regardless of whether members of a controlled group of which the taxpayer is also a member are interested parties in the transaction with respect to which the ruling is requested.

The ruling request must contain a concise statement of the ruling requested by the taxpayer.

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The taxpayer should also submit, in hard copy and diskette, a draft of the response letter containing the ruling requested.

The omission of facts, information or documents required by this section shall be considered an omission of material facts for purposes of section 6 of this Circular Letter. Accordingly, a letter ruling or administrative determination issued under such conditions may be revoked retroactively.

C. Assertions

If the taxpayer advocates a particular conclusion, an explanation of the grounds for the assertion must be furnished, together with a statement of relevant authorities in support of the taxpayer's conclusions.

Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

In addition, the taxpayer must inform the Department and discuss the implication of any legislation, tax treaties, court decisions, regulations, revenue rulings and administrative letters that the taxpayer determines to be contrary to the position advanced. If the taxpayer determines, after a diligent search, that there are no contrary authorities, a statement to this effect must be included in the ruling request.

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Identification and discussion of contrary authorities will generally enable this Department to expedite a full understanding of the issues and the relevant authorities. On the other hand, failure to disclose and distinguish significant contrary authorities may result in requests for additional memoranda that will delay action in the ruling request.

D. Same issue in an earlier return

The request must state whether, to the best knowledge of both the taxpayer and taxpayer's representative, the same issue is in an earlier return of the taxpayer (or in a return for any year of a related taxpayer within the meaning of section 1024 of the Code or of a member of a controlled group of which the taxpayer is also a member within the meaning of section 1028 of the Code).

If the statement is affirmative, it must specify whether the issue:

1. is being examined.
2. has been examined, but the statutory period of limitations has not expired for either assessing tax or filing a claim for refund or credit of tax;
3. has been examined, but a closing agreement covering the issue or liability has not been entered into by the Department;
4. is being considered by the Assistant Secretary for Appeals in connection with a return for an earlier period;

5. has been considered by the appeal office in connection with a return from an earlier period, but the statutory period of limitations has not expired for either assessing tax or filing a claim for refund or credit of tax;

6. has been considered by the appeal office in connection with a return from an earlier period, but a closing agreement covering the issue or liability has not been entered into by the Department;

7. is pending in litigation in a case involving the taxpayer or a related taxpayer.

E. Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending.

The request must also state whether, to the best knowledge of both the taxpayer and the taxpayer's representative:

1. the Department previously ruled on the same or a similar issue for the taxpayer (or a related taxpayer within the meaning of section 1024 of the Code or a member of a controlled group of which the taxpayer is also a member within the meaning of section 1028 of the Code);

2. the taxpayer, a related taxpayer, a predecessor, or any representative previously submitted a request (including an application for change in accounting method) involving the same or a similar issue to the Department

but withdrew the request before a letter ruling or administrative determination was issued;

3. the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in accounting method) involving the same or a similar issue that is currently pending with the Department; or

4. at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in accounting method) or closing agreement involving the same or a similar issue to the Department.

If the statement is affirmative for 1, 2, 3, or 4, the statement must give the date the request was submitted, the date the request was withdrew or ruled on, if applicable, and other details of the Department's consideration of the issue.

F. Statement identifying pending legislation.

At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if legislation is introduced after the request is filed but before a letter ruling or administrative determination is issued, the taxpayer must notify the Department.

G. Signature on the request.

The request for a ruling must be signed and dated by the taxpayer or the taxpayer's authorized

representative. A stamped signature is not permitted. If the request is signed by a representative of the taxpayer, the ruling request must be accompanied by a duly executed power of attorney. The requirement to submit a duly executed power of attorney is not applicable either to an individual representing his full-time employer or to a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or other organized group. In this case, such individual must set forth the capacity in which he signed the oath.

H. Penalties of perjury statement.

The following oath must be presented by the taxpayer or his authorized representative at the close of the ruling request:

> "Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, if any, and to the best of my knowledge and belief, this request contains all relevant facts relating to such request, the facts presented in support of the requested ruling are true, correct and complete, and the issue(s) contained therein (a) are not being considered by the Puerto Rico Treasury Department in connection with an active examination or audit of a tax return of the interested parties or by the Assistant Secretary for Appeals; and (b) are not pending litigation in a case involving the undersigned or a related taxpayer."

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The oath must be signed and dated by the taxpayer, not the taxpayer's representative. A stamped signature is not permitted.

The person who signs for a corporate taxpayer must be an officer of the corporate taxpayer who has personal knowledge of the facts and whose duties are not limited to obtaining a letter ruling or administrative determination from the Department. If the corporate taxpayer is a member of an affiliated group filing consolidated returns (for federal tax purposes), a penalty of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a Puerto Rico or state law partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

I. Sample format for a letter ruling request

To assist a taxpayer or the taxpayer's representative in preparing a letter ruling request, a sample format for a letter ruling request in provided in Appendix A. This format is not required to be used by the taxpayer or the taxpayer's representative. If the letter ruling request is not identical or similar to the format in Appendix A, the different format will not defer consideration of the letter ruling request.

J. Checklist for letter ruling requests.

The Department will be able to respond more quickly to a taxpayer's letter ruling request if the request is carefully prepared and complete. The checklist in Appendix B of this Circular Letter is designed to assist

taxpayers in preparing a request by reminding them of the essential information and documents to be furnished with the request. The checklist in Appendix B must be completed to the extent required by the instructions in the checklist, signed and dated by the taxpayer or the taxpayer's representative, and placed on top of the letter ruling request. If the checklist in Appendix B is not received, a representative of the Department will ask the taxpayer or the taxpayer's representative to submit the checklist, and the ruling request will not be deemed filed until the checklist is received.

For letter ruling requests on certain matters, the Department may adopt specific checklists to supplement the checklist in Appendix B. Those checklists must also be completed and placed on top of the letter ruling request along with the checklist in Appendix B.

Copies of the checklist in Appendix B can be obtained by calling (787) 721-2020 extensions 2610 and 2611 (not a toll-free call). A photocopy of this checklist may be used.

K. <u>To request separate letter rulings for multiple issues in a single situation</u>.

If more than one issue is presented in a request for a letter ruling, the Department generally will issue a single letter ruling covering all the issues. However, if the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the Department will usually comply with the request unless it is not

feasible or not in the best interests of the Department to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit two copies of the request.

In issuing each letter ruling, the Department will state that it has issued separate letter rulings or that requests for other letter rulings are pending.

L. To designate recipient of original or copy of letter ruling or determination letter.

Unless the power of attorney provides otherwise, the Department will send the original of the letter ruling or administrative determination letter to the taxpayer's representative. In this case, the letter ruling or administrative determination is addressed to the taxpayer's representative. If the taxpayer wants to receive a copy of the letter ruling or administrative determination from the Department, the ruling must indicate so. It will be preferred that the form the Department may adopt as a power of attorney and declaration of representative be used to provide the taxpayer's authorization.

M. To have original and copies sent to multiple representatives.

When a taxpayer has more than one representative, the Department will send the original of the letter ruling or administrative determination to the first representative named on the most recent power of attorney. If the taxpayer wants an additional copy of the letter ruling or administrative determination sent to the second representative listed in the power of attorney, the taxpayer must state so in the power of

attorney. Copies of the letter ruling or administrative determination, however, will be sent to no more than two representatives.

If the taxpayer wants to receive the original of the letter ruling or administrative determination, the taxpayer must state in the power of attorney that the original of the letter ruling or administrative determination should not be sent to the taxpayer's representative.

N. To receive a letter ruling by fax.

A letter ruling ordinarily is not sent by fax. However, at the taxpayer's request, a copy of a letter ruling may be faxed to the taxpayer or the taxpayer's authorized representative. A letter ruling, however, is not issued until the ruling is mailed, or delivered by hand and the taxpayer or taxpayer's authorized representative acknowledges receipt of it.

A request to fax a copy of the letter ruling to the taxpayer or the taxpayer's authorized representative must be made in writing, either as part of the original letter ruling request or prior to the approval of the letter ruling. The request must contain the fax number of the taxpayer or the taxpayer's authorized representative to whom the letter ruling is to be faxed.

In addition, because of the nature of a fax transmission, a statement containing a waiver of any disclosure violations resulting from the fax transmission must accompany the request. Nevertheless, the Department will take certain precautions to protect confidential information. For example, the Department will use a cover sheet that

identifies the intended recipient of the fax, the number of pages transmitted and a statement prohibiting unauthorized disclosure of the letter ruling if a recipient of the faxed letter ruling is not the intended recipient of the fax.

O. Circumstances under which the taxpayer must notify the Internal Revenue Area.

The taxpayer must notify the Internal Revenue Area if, after the letter ruling request is filed but before a letter ruling is issued, the taxpayer knows that:

1. an examination of the issue or the identical issue on an earlier year's return has been started by the Fiscal Audit Bureau;

2. legislation that may affect the transaction has been introduced (See section 3.F. of this Circular Letter); or

3. another letter ruling request (including an application for change in accounting method) has been submitted by the taxpayer (or a related party within the meaning of section 1024 of the Code or a member of a controlled group of which the taxpayer is also a member within the meaning of section 1028 of the Code) involving the same or similar issue that is currently pending with the Department.

P. Taxpayer must notify Department if return is filed before receiving the ruling.

If the taxpayer files a return before a letter ruling is received from the Department concerning the issue,

the taxpayer must notify the Internal Revenue Area that the return has been filed.

This section also applies to pending requests for a closing agreement on a transaction for which a letter ruling is not requested or issued.

O. Withdrawals and Declination to issue a ruling.

A taxpayer may withdraw a request for a letter ruling or administrative determination at any time before the letter ruling or administrative determination is signed by the Department. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the Internal Revenue Area declines to issue a letter ruling will not be returned to the taxpayer. In appropriate cases, the Department may publish its conclusions in an administrative determination.

R. Notification to Fiscal Audit Bureau.

1. Request to change an accounting method. If a taxpayer withdraws or the Internal Revenue Area declines to grant (for any reason) a request to change from or to adopt an improper method of accounting, the Department may consider such withdrawal or declination in any later examination of the return.

2. All other letter ruling requests. If a taxpayer withdraws a letter ruling request (other than a request to change from or to adopt an improper method of accounting) or if the Department declines to issue a letter ruling (other than a letter ruling pertaining to a

request to change from or to adopt an improper method of accounting), the Department may consider such withdrawal or declination in any later examination of the return. This section 3.R. generally does not apply if the taxpayer withdraws the letter ruling request and submits a written statement that the transaction has been, or is being, abandoned and if the Internal Revenue Area has not formed an adverse opinion.

S. Refunds of filing fee.

The filing fee will not be returned for a letter ruling request that is withdrawn or denied. If the Internal Revenue Area declines to issue a letter ruling on all of the issues in the request, the fees will be returned. If the Internal Revenue Area, however, issues a letter ruling on some, but not all, of the issues, the filing fee will not be returned.

T. Conferences

A taxpayer or an authorized representative who wishes to have a conference on the issues involved must indicate so in the ruling request. The conference will be granted if the Department, at its discretion, deems that it is necessary for considering the ruling. The discussion of the ruling request at a conference does not imply nor warrants that the Department will issue a favorable opinion or a commitment to do so. No conference will be granted to discuss the possible tax treatments of a transaction, how to structure a transaction or what is the policy of the Department

regarding a transaction prior to submitting a ruling request.

Material facts furnished to the Department by telephone or orally at a conference must be promptly confirmed by letter to the Department, since the purpose of this procedure is to speed up the ruling and determination letter process. This confirmation and any additional information requested by the Department must be furnished within 14 calendar days to be considered part of the request. Additional information submitted to the Department must be accompanied by the oath mentioned on section 3.H. herein. If the Department is not notified of problems in meeting the 14-day period, the request will be processed under the assumption that no further information will be received or, if appropriate, no ruling will be issued.

Section 4. Processing a Ruling Request

It is the practice of this Department to process requests for rulings in the order received and as expeditiously as possible. Compliance with petitions for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters under consideration by this Department. Petitions for processing a ruling request ahead of the regular order, made in writing in a separate letter submitted either with the request or subsequent thereto and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance shall be given that any ruling will be processed by the time requested.

Appendix E

If a less than fully favorable letter ruling is indicated, the Department representative may tell the taxpayer whether minor changes in the transaction or adherence to certain positions published in administrative determinations or circular letters would bring about a favorable ruling. The Department representative may also tell the taxpayer the facts that must be furnished in a document to comply with Department requirements. However, the Department representative will not suggest precise changes that would materially alter the form of the proposed transaction or materially alter a taxpayer's proposed accounting method or accounting period.

The Department will not be bound by the informal opinion expressed by the Department's representative.

Section 5. Oral Advice to Taxpayers

It is not the practice of this Department to issue rulings upon oral requests. Furthermore, officials of this Department ordinarily will not discuss a substantive tax issue with a taxpayer or his authorized representative prior to the receipt of a written request for a ruling. However, a taxpayer or his authorized representative may inquire as to whether the issue involved in a transaction is one in which a ruling will be issued.

Nevertheless, a taxpayer may seek oral technical assistance from an official of this Department in the preparation of his return, pursuant to other established procedures. Such oral advice is advisory only and the Department is not bound to recognize it in the examination of the taxpayer's return.

Appendix E

Section 6. Effect of Rulings

A ruling issued by this Department will generally be binding on the Department as long as the representations upon which the ruling was based reflect an accurate statement of the material facts with respect thereto, and the transaction was carried out as proposed, and there has been no change in the law and regulations that apply to the period during which the transaction or continuing series of transactions were consummated.

A taxpayer may not rely on nor cite as precedent a ruling issued to another taxpayer.

A ruling or administrative determination found to be in error or not in accord with the current views or policies of the Department may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to which the ruling was issued or by publication of an administrative determination, circular letter or other public form. Except in rare or unusual circumstances, the revocation or modification of a ruling or administrative determination will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to an interested party whose tax liability was directly involved in that ruling, if:

1. the ruling or administrative determination was originally issued with respect to the transaction undertaken;
2. there has been no misstatement or omission of material facts;

3. the facts at the time of the transaction are not materially different from the facts on which the ruling or administrative determination was based;

4. there has been no change in the applicable law or regulations; and

5. the taxpayer directly involved in the ruling acted in good faith in relying on the ruling or administrative determination and the retroactive revocation or modification would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling on the reorganization of a corporation. However, the tax liability of a member of an industry is not directly involved in a letter ruling issued to another member and, therefore, the holding in a revocation or modification of a letter ruling to one member of an industry may be retroactively applied to other members of the industry. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a transaction completed before the issuance of the letter ruling or involving a continuing action or series of actions occurring before the issuance of the letter ruling because the taxpayer did not enter into the transaction relying on a letter ruling.

If a ruling or administrative determination is revoked or modified retroactively, the revocation or modification applies to all years open under the statute of limitations. In the event of a change in the applicable law or regulations, if the above other four conditions are met, the revocation will be applicable from the date that the change takes place.

If a letter is revoked or modified by letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

The Department, without condition or requirement, may also modify or revoke retroactively a ruling or administrative determination if the proposed transaction or a continuing action or series of actions that originated the ruling or administrative determination has not been undertaken as of the date of the modification or revocation.

Section 7. Requisite of attaching copy of the Ruling

If before filing a return, a taxpayer receives a ruling about any transaction that has been consummated and that is relevant to the return being filed, a copy of the ruling or administrative determination must be attached to the return.

Section 8. Noncompliance with Provisions of Circular Letter

If a request for a ruling or administrative determination does not comply with all the provisions of this Circular Letter, the same will be acknowledged

and the requirements that have not been met will be pointed out. If a request for a ruling lacks essential information, which may include additional information needed to satisfy the procedural requirement of this Circular Letter, as well as substantive changes to the transaction or documents needed from the taxpayer, the taxpayer will be notified that if the information is not received within 30 calendar days, the request will be closed. No extension of the 30-day period will be granted, except if justified in writing and approved by the Department. A request for extension must be submitted before the end of the 30-day period. If the extension is denied, there is no right to appeal. If the information is received after the request is closed, it will be reopened and treated as a new request as of the date essential information is received. Therefore, this new request will be subject to the same payment of the original fees imposed to ruling requests under Act No. 15 of July 20, 1990.

Section 9. Specific Guidelines

Specific guidelines for requesting rulings under certain provisions of the various tax acts may be issued by this Department. Taxpayers or their authorized representatives must also follow these guidelines when requesting rulings under such tax acts.

Section 10. Effectiveness

This Circular Letter will be effective for ruling requests filed on or after March _, 1999, and substitutes the Circular Letter 86-3 issued by this Department on April 21, 1986.

Remember, Hacienda is at your service.

Cordially,

Xenia Véelez Silva

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

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(3)

No. 09-233

In the
Supreme Court of the United States

TRIPLE S MANAGEMENT, CORP; TRIPLE S SALUD, INC.

Petitioners,

v.

MUNICIPAL REVENUE COLLECTION CENTER (CRIM)

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Puerto Rico

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIRARI

ANGEL X. VIERA-VARGAS
Counsel of Record

GOLDMAN ANTONETTI & CÓRDOVA, P.S.C.
P.O. Box 70364
San Juan, PR 00936-8364
Tel. No. (787) 759-4132

Attorneys for Respondent Municipal Revenue Collection Center

QUESTION PRESENTED

Whether Petitioners failed to present any issues worthy of consideration by this Court.

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STATEMENT OF THE CASE

In their statement of the case Petitioners venture far outside of the facts as affirmed by the Puerto Rico Court of Appeals[1], and rely on a version that was rejected both by the appellate panel Judges and by the Judges of the Court of First Instance. The critical facts found by the courts who entertained this case below are:

> Petitioners' corporate predecessor, Seguros de Salud de Puerto Rico, Inc., better known as Triple S, was organized in 1959 as **a for-profit** corporation and insurer, pursuant to the General Corporations Law of Puerto Rico of 1956 and the Insurance Code of Puerto Rico, **App. 6**[2]
>
> On July 16, 1976, through an administrative determination, the Puerto Rico Department of the Treasury (hereinafter PRTD) granted an income tax exemption to Triple S, in conformity with Section 101(8) of the Income Tax Act of 1954. **App. 6**
>
> On June 12, 1987, the PRTD extended the tax exemption granted to Triple S in order to cover its real and personal property based on the

---

[1] The Supreme Court of Puerto Rico refused to hear this case.

[2] Of Petitioners' brief.

provisions set forth in Article 291(t) of the Political Code of Puerto Rico, **App. 7**

On November 6, 1998, the PRTD again ratified the tax exemption originally granted to Triple S under the then repealed Income Tax Act of 1954, now section 1101(6) of the Puerto Rico Internal Revenue Code of 1994 (hereinafter the PR Code), 13 L.P.R.A. sec. 8501(6). Likewise, on December 15, 1998, Respondent CRIM ratified Triple S's tax exemption over its personal and real property. **App. 7**

By letter dated July 31, 2003, the PRTD gave notice to Triple S of its intention to repeal the administrative determination it had issued on November 6, 1998, under section 1101(6) of the PR Code. **App. 7**

On that same date, the PRTD and Triple S executed a "Final Agreement" in which both parties stipulated that Triple S would pay 37 million dollars as a tax against the assigned dividends as of the date of the Agreement, covering retained earnings generated from to 1979 to 2002. Triple S also agreed it would pay $14.7 million dollars as income tax corresponding to the 2003 tax year by April 15, 2004. **App. 8**

On February 1, 2006 Respondent CRIM notified Triple S of its decision to retroactively

revoke the administrative determination issued on December 15, 1998, through which it had granted a tax exemption against its personal and real property. **App. 9**

Subsequently, on March 1 and March 3 of 2006, respectively, the CRIM sent Triple S notice and demands for payment of tax over personal and real property. With regards to real property, the CRIM demanded from Triple S the payment of $1,326,024.52. With regards to personal property, it demanded the payment of $3,998,341.27. **App. 10**

Act No. 80 of August 30, 1991, known as the "Municipal Revenue Collection Center Act", 21 L.P.R.A. sec 5801 *et* seq., created Respondent as a municipal entity independent and separate from any other agency or instrumentality of the state, with the ultimate purpose of granting municipalities more control over the revenue from property taxes and in this way preventing the central government from unduly controlling the fiscal process of the municipalities. **App. 18**

CRIM is in charge of fiscal services, and its primary responsibility is "to collect, receive and distribute the public funds" that correspond to the municipalities, 21 L.P.R.A. sec. 5802. The Municipal Property Tax Act, 21 L.P.R.A. sec 5001et seq, (hereinafter the MPTA) was also enacted into law in August

30, 1991. Its purpose was to transfer to the Respondent the powers, faculties, and functions that up until then had been possessed by the PRTD with regards to personal and property tax. Article 5.01, subsections (e) and (g) of the MPTA, 21 L.P.R.A. sec. 5151, provides as follows:

> "The following assets shall be exempt from the payment of all personal and real property taxes:
>
> ...
>
> (e) The real and personal property belonging to and registered in the name of any nonprofit corporation, institution, partnership or entity organized under the laws of Puerto Rico dedicated to religious, charitable, scientific, literary, educational, and recreational purposes, among other, as well as commercial leagues, chambers of commerce, civic leagues or organizations, boards of proprietors, tenant associations, employee associations, and any other nonprofit organization in general, whose net properties and utilities do not benefit any shareholder or person in particular . . .
>
> (g) Real and personal property belonging to every nonprofit association organized under the laws of Puerto Rico for the purpose of selling prepaid

> programs or plans for medical and hospital services provided it complies with the requirements of Act No. 142 of May 9, 1942, as amended."

App. 19-21

Section 7.03 of the MPTA establishes that "[t]he acquired rights of the taxpayers under the prior legislation or any other special laws, will continue in effect so long as they are not in conflict with the provisions of this law." **App. 21**

This suggests that should there be a provision contrary to the MPTA, supra, issued in the past by the PRTD, Respondent CRIM could revoke it and would not be obligated to accept it. **App. 36**

Article 5.01, subsections (e) and (g), of the MPTA, supra, provide expressly that the benefit of personal and real property tax exemption is exclusively reserved for entities incorporated as not-for-profit. This was established in the same manner by its predecessor statute, Article 291(t) of the Political Code, as well as (for income tax purposes) by Section 101(8) of the Income Tax Act of 1954, and by Section 1101(6) of the PR Code. **App. 37**

There is no doubt that the legal provisions pursuant to which Triple S was granted diverse tax exemptions from 1976 to 2003 did not allow the concession of such benefits to a for-profit entity. Therefore, it must be concluded that the tax exemption granted to Triple S by the PRTD is in clear conflict with what is provided in the cited statutes and Respondent CRIM was not compelled, as Triple S claims, to give deference to the same. **App. 37**

Faced with this situation, the CRIM could revoke the administrative determinations issued by the PRTD for being in conflict with the provisions of the MPTA, supra. **App. 37.**

Since the administrative determinations issued by the PRTD were ***ab initio*** null and void, Respondent could validly revoke the same and demand the payment of the taxes not paid by Triple S. Incidentally, Petitioner agreed with the PRTD on a global payment of Thirty Seven Million Dollars ($37,000,000.00) attributable to the periods of effectiveness of the exemption, which, evidently signified the recovery of the income tax that the Petitioner failed to pay when benefiting from the exemption granted. To that effect, as part of the Agreement, Triple S would be allowed to distribute the balance of its retained earnings to its shareholders. Said action would not

> have been possible if they were treated as a non profit entity. **App. 38**
>
> The Puerto Rico Court of First Instance and the Court of Appeals concluded that the PRTD incurred in ***ultra vires*** conduct by granting Petitioners, corporations organized for-profit, a tax exemption over its personal and real property. Such action did not generate any right in favor of Petitioners, does not obligate Respondent, nor does it impede it from effectuating its correction. **App. 38**

REASONS FOR DENYING WRIT

The retroactivity doctrine invoked by Petitioners is not applicable to the facts of the case.

Petitioners cite various decisions of this Court, among them Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988) in support of their argument against the retroactivity in the imposition of taxes. In Bowen, this Court faced a controversy related to the retroactive application of a regulation and determined that such course of action was only permissible when the language of its enabling statute provided for such result. See Bowen at 208. Said doctrine is inapposite and clearly distinguishable from the facts currently present before this Court.

The case at bar is about a determination by an agency of the executive (the PRTD) which granted a tax exemption to a corporation organized for-profit, when the black letter of the law allowed for such benefit to be granted solely to non-profit corporations. This transaction was determined by all three (3) state courts who have examined the matter, as well as by two (2) legislative investigations to be ***ultra vires*** inasmuch as the PRTD lacked authority to act as it did. This state of matters is susceptible to be corrected at any time, just as Respondent did, without the entity who benefited from the irregular treatment having a right to claim that such correction only be done prospectively.

This is not a case of arbitrary and capricious retroactive application of its taxation power by a state Government. The situation before this Court is rather one of a private for-profit entity trying to avail itself of tax benefits to which it had no right under the clear letter of the law, a situation that was amended by subsequent actions taken in conjunction by the legislative and executive branches of the Commonwealth of Puerto Rico.

During the course of the year 2002 both chambers of the Legislative Assembly of Puerto Rico witnessed the filing of Resolutions where the granting of income tax exemption status to Petitioners and/or their corporate predecessors was questioned. This in view of the fact that the clear letter of section 1101(6) of the PR Code did not allow for the concession of tax exempt status to

corporations organized for-profit.[3] During the year 2003 various House and Senate Committees conducted extensive public hearings, whose findings are vital to the present case, and which can be summarized as follows:

1) The tax exemption granted to Petitioners and/or their corporate predecessors by the PRTD lacked any basis under Puerto Rico law.
2) No other of Petitioners' competitors in the insurance business has enjoyed tax exempt status under section 1101(6) of the PR Code.
3) Petitioners had accumulated earnings in the amount of One Hundred Seventy Two Million Dollars ($172,000,000.00) between 1979 and 2003.
4) The PRTD calculated the income taxes owed by Petitioners to be the amount of Fifty One Million Dollars ($51,000,000.00), a matter over which it reached a closing agreement with Triple S that provided for the payment by Petitioners of Thirty Seven Million Dollars ($37,000,000.00) by July 31, 2003 and $14.5 million dollars by April 14, 2004.

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[3] See House Resolution No. 4490 filed on May 28, 2002 and Senate Resolution No. 2096, filed on September 6, 2002.

See: Final Report on House Resolution 4490, dated August 1, 2003 and Final Report on Senate Resolution 2096, dated August 8, 2003. No claim of arbitrary and capricious retroactive taxation was raised by Petitioners in their dealings with the PRTD during the year 2003. Petitioners can not have it both ways! We respectfully submit that they do not come before this Court with clean hands.

The doctrine of Estoppel cannot be raised against Respondent in the present circumstances.

What Petitioners are really arguing is that Respondent is estopped from demanding the payment of taxes which were not originally collected due to what resulted to be a clearly erroneous interpretation of the letter of the law. This was precisely the issue before this Court in the case of Automobile Club of Michigan v. Commissioner of Internal Revenue, 353 U.S. 180 (1957). There, respondent revoked petitioner's tax exempt status granted under section 101(9) of the Internal Revenue Code of 1939. Said status was based upon an erroneous interpretation of the term "club" and thus, based upon a mistake of law. Upon demand of the payment of retroactive taxes by respondent, the petitioner argued that the Government was banned from seeking retroactive payment of the taxes. Both the Tax Court and the Court of Appeals sustained the authority of the Commissioner to retroactively impose and collect such taxes. This Court confirmed the courts below and held:

> "The petitioner argues that, in light of the 1934 and 1938 rulings, the Commissioner was equitably estopped from applying the revocation retroactively. This argument is without merit. The doctrine of equitable estoppel is not a bar to the correction by the Commissioner of a mistake of law."

Automobile Club of Michigan, 353 U.S. at page 183.

The fact that a private entity cannot rely on and seek succor in ***ultra vires*** actions by a Government agent has been recognized by this Court.

> "Whatever the form in which the government functions, any one entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority."

Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947).

In Heckler, Secretary of Health and Human Services v. Community Health Services of Crawford County, 467 U.S. 51 (1984) respondent received and expended federal monies to which it was not entitled due to an incorrect interpretation of federal

regulations. It later claimed that the Government was estopped from recovering those funds because it has relied on the express authorization of a Government agent. The Third Circuit Court of Appeals agreed with respondent's position. This Court reversed, based on the fact that, even though it could not rule that estoppel cannot run against the Government under any circumstances:

> "When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant."

Heckler at 60.

The Court went on to explain the stringent circumstances that must be shown to be able to invoke estoppel against the Government; we quote *in extenso*:

> "To analyze the nature of a private party's detrimental change in position, we must identify the manner in which reliance on the Government's misconduct has caused the private citizen to change his position for the worse. In this case the consequences of

> the Government's misconduct were not entirely adverse. Respondent did receive an immediate benefit as a result of the double reimbursement. Its detriment is the inability to retain money that it should never have received in the first place. Thus, this is not a case in which the respondent has lost any legal right, either vested or contingent, or suffered any adverse change in its status. When a private party is deprived of something to which it was entitled of right, it has surely suffered a detrimental change in its position. Here respondent lost no rights but merely was induced to do something which could be corrected at a later time."

Heckler at 61-62.

Finally, the Court held at page 62:

> "A for-profit corporation could hardly base an estoppel on the fact that the Government wrongfully allowed it the interest free use of tax payer's money for a period of two or three years, enabling it to expand its operation."

This is precisely what Petitioners in the present case did. During the years where they enjoyed an incorrectly granted total exemption from

the payment of income and property taxes to the Commonwealth of Puerto Rico they accumulated One Hundred Seventy Two Million Dollars ($172,000,000.00) in earnings and became an insurance giant to the detriment of other competitors in the industry who, even though legally organized in the same manner as Petitioners, never enjoyed similar tax exemption and complied with their fiscal responsibilities. Further, it is worth repeating that Petitioners' objection to Respondent's retroactive tax assessment is, at best, selective in view of the Fifty One Million Dollars ($51,000,000.00) they paid to the PRTD in lieu of the taxes they failed to pay during the years they enjoyed an ***ultra vires*** tax exemption.

----------◆----------

CONCLUSION

The petition for writ of Certiorari should be denied. Respondent requests attorneys' fees and costs, including double costs for Petitioners' filing of a frivolous petition under Supreme Court Rules 42(2) and 43(7).

Respectfully submitted,

ANGEL X. VIERA-VARGAS
Counsel of Record

GOLDMAN ANTONETTI & CÓRDOVA, P.S.C.
P.O. Box 70364
San Juan, PR 00936-8364
Tel. No. (787) 759-4132

Attorneys for Respondent Municipal Revenue Collection Center

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In the
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TRIPLE-S MANAGEMENT, CORP.;
TRIPLE-S SALUD, INC.,

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v.

MUNICIPAL REVENUE
COLLECTION CENTER (CRIM),

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth Of Puerto Rico

REPLY BRIEF FOR PETITIONERS

PAUL D. CLEMENT
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

PEDRO E. ORTIZ ALVAREZ
P.O. Box 9009
Ponce, PR 00732

RICHARD H. PILDES
Counsel of Record
Vanderbilt Hall Room 507
40 Washington Sq. So.
New York City, NY 10012
(212) 998-6377

Counsel for Petitioners

December 14, 2009

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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REPLY

Respondent's brief in opposition only confirms the reasons this Court should grant certiorari. That brief fully endorses the sweeping proposition on which the taxing authorities and the courts below relied: that if an agency proclaims its earlier interpretation of a statute "wrong," there are no limits whatsoever on the agency's power to apply that re-interpretation retroactively—no matter how far back in time the agency reaches, no matter the consequences or how much that retroactive change defeats reasonable, investment-backed reliance, and no matter how formal, authoritative, and purportedly binding was the agency's prior interpretation. Constitutional principles that limit retroactive government action are not indifferent to such extreme regulatory retroactivity. Respondent's opposition confirms there are no meaningful facts in dispute, and the only legal authority respondent invokes reinforces the justifications for this Court's review.

1. The Issues Are of Broad National Importance. The fundamental issue at stake is whether due process applies *at all* when agencies change their authoritative, binding interpretations of law retroactively, even when that retroactivity reaches far back into the past—in this case, 15 years—to impose dramatic, unforeseen financial liabilities. In interpreting the tax code, the taxing authorities in this case adopted a "new public policy," as they forthrightly characterized it, *see* Pet. App. 175, and imposed the new policy retroactively back a decade and a half. The

respondent, CRIM, does not dispute that, had a legislature similarly adopted a new tax policy and reached back 15 years, the statute would violate due process. Nor does the respondent dispute that, as the petition explains, decisions like the one below tear a large hole in the fabric of this Court's retroactivity cases by completely exempting retroactive changes in agency re-interpretations of law from any of the due process limitations that constrain other retroactive government action.

The national importance of this issue is confirmed by the Council of State Taxation's participation. The Council has moved to file an *amicus curiae* brief in support of the petition because the "business community throughout the nation is significantly concerned about the continued inconsistent and frequently incorrect application by state courts of the Due Process Clause standard to challenges brought against retroactive taxes." CST Br. 4. The Council notes that its members routinely challenge retroactive tax imposition, "but find a severe lack of consistency in state court decisions based on state courts' varied interpretations of the Due Process clause." *Id.* at 2. Thus, the issues presented are clearly of the breadth and significance that justify this Court's review.

2. Far From Supporting Respondent, This Court's Decision in Automobile Club of Michigan Provides Further Reason to Grant the Petition. Respondent's *only* legal argument is that the petition should be denied on the basis of *Automobile Club of Michigan v. Commissioner*, 353 U.S. 180 (1957). But *Automobile Club* does not

address the constitutional issue presented here in any way. It provides no basis for respondent's position that due process gives agencies *carte blanche* to change their interpretations of law retroactively—no matter how far back in time that retroactivity runs, no matter how oppressive it is to reasonable, investment-backed reliance interests, and no matter how little justification the agency offers for reaching back 15 years to impose retroactive taxation. Moreover, to the extent *Automobile Club* is relevant at all, it confirms the reasons the Court should grant certiorari.

In that case, the Commissioner of Internal Revenue, in 1934 and 1938 letter rulings, had concluded that the Club was tax exempt. In 1943, the Commissioner reconsidered and changed course; the Commissioner got around to applying this policy to the Automobile Club of Michigan in 1945 and applied it back to 1943, when the change in position was first implemented for other automobile clubs. The Club argued that the Commissioner should be "equitably estopped" from doing so, and the Court properly rejected that argument. *Id.* at 183.

That decision provides no comfort to the respondents. First, the Club did not raise, and the Court did not address, any constitutional or due process claim. That is not surprising, given the mild transitional retroactivity involved. Second, and perhaps even more important, the mild, two-year transitional retroactivity involved in *Automobile Club* is precisely the kind of modest retroactivity in the tax area, justified by legitimate purposes, that this Court's cases permit. The

petition acknowledges that this kind of modest retroactivity in the tax area is fully proper. *See* Pet. 15-16 (discussing *United States v. Carlton*, 512 U.S. 26 (1994), and related cases). Thus, even had a due process issue been raised in *Automobile Club*—and even had the Court rejected such a due process argument there—it would have no bearing on the reasons to grant certiorari here. The petition already accepts that situations like that in *Automobile Club* do not violate due process, let alone raise the kind of due process concerns at issue here.

Yet it is noteworthy that the Commissioner in *Automobile Club*, unlike the taxing authorities in this case, did *not* assert or exercise the power to reach back to 1934, eleven years earlier, when it first had ruled the Club tax exempt. Indeed, the change in interpretation in that case was essentially prospective. The Commissioner announced and began to apply the policy in 1943 only to tax years starting with 1943; in beginning to apply that policy to the Automobile Club of Michigan in 1945, the Commissioner went back to 1943 only because that was the date the new interpretation had gone into effect for others. In refraining from reaching all the way back to when the Commissioner had first ruled the Club exempt, eleven years earlier, the Commissioner might or might not have been motivated by constitutional avoidance concerns. But the Commissioner did refrain from imposing a grossly oppressive and unfair result that *would* have raised serious due process issues.

The Commissioner's decision at issue in *Automobile Club* is appropriate and completely consistent with the principles on which the petition for certiorari rests. In contrast, when taxing authorities assert that they have constitutional *carte blanche* to go back as far in time as they want with a change in legal interpretation—indeed, all the way back to the day the taxing authority itself was created, as in this case—the evident need for this Court's review cannot be undermined by pointing to the *Automobile Club* case.

3. There Are No Material Facts in Dispute. Respondent does not deny that Triple-S organized its business structures and practices in reliance upon the formal, binding rulings it received from the Puerto Rican taxing authorities. Nor does the respondent deny that the taxing authorities were delegated statutory authority to issue binding rulings of this sort. Respondent does not dispute that Triple-S received at least six such formal, binding administrative rulings over 30 years that entitled it to tax-exempt status, as long as it complied with various conditions. *See* Pet. 2. Nor does the respondent deny that Triple-S fully complied with approximately five pages of strict terms and conditions that Treasury laid out for Triple-S to maintain its tax-exempt status. Those restrictions included specified limits on compensation to officers and directors, requirements that surpluses be invested in a defined manner (to lower premium costs), obligations of annual sworn filings that testified to Triple-S's operations, and the like. *See* Pet. 4–5.

In short, respondent does not deny that Triple-S had reasonable, investment-backed reliance interests, based on 30 years of consistent formal rulings by the taxing authorities, and that those reliance interests were obliterated when CRIM reached back to impose 15 years of retroactive tax liability. Instead, respondent's position is simply that none of this matters: as long as an agency declares its earlier interpretation of law "wrong," an agency can reset the clock at will and apply its new interpretation as retroactively as it wants.

Respondent does introduce one new "factual" assertion that requires clarification. Although irrelevant to the legal issues presented, respondent asserts that Triple-S agreed to pay retroactive taxes to the Department of the Treasury in Puerto Rico ("Treasury"), totaling $51 Million, going back many years. Even if this characterization were accurate, that separate agreement would have no bearing on whether CRIM violates due process in demanding 15 years of retroactive taxes from Triple-S. Triple-S has not somehow "waived" its constitutional rights; not even CRIM goes that far. But in any event, the characterization is false.

The agreement is reproduced in the Petition at Appendix D. *See* Pet. App. 164. As its text makes clear, Treasury imposed only prospective taxes on Triple-S, in light of what Treasury forthrightly called its "new policy" about how to interpret the tax code. *See* Pet. App. 170, ¶¶ 1–4.[1]

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[1] The payment to which CRIM refers was imposed on, and paid by, Triple-S Management, a separate taxpayer, not by

Finally, CRIM inaccurately suggests that Triple-S benefitted unfairly because its competitors were not exempt. But these competitors, which eventually emerged in the health-insurance sector, were fully run as for-profit corporations. They did not operate under all the conditions and constraints under which Triple-S operated in order to receive and maintain its tax-exempt status. Indeed, as far as petitioner is aware, none of these entities ever even sought tax-exempt status. As a low-cost provider of pre-paid medical and hospital insurance, whose shareholders (doctors and dentists) relinquished any right to dividends, Triple-S had a unique history. Triple-S does not raise any constitutional objection to its tax treatment being changed prospectively, including through administrative re-interpretation of the tax code to adopt a "new policy." But Triple-S does argue that due process demands more from agencies that seek to impose 15 years of retroactive taxation than just the simple statement that they now believe their earlier, authoritative, and binding interpretation was "wrong."

*4. **The Petition Should be Granted or Held.*** As the petition explains, the decision below opens a wide hole in this Court's retroactivity

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Triple-S, which is the entity that Treasury and CRIM had ruled tax exempt. Triple-S Management Corp. was the shareholder of Triple-S; once Treasury revoked the exemption, Triple-S Management Corp. became entitled to receive dividends from Triple-S, for which it would be taxed. The parties agreed to a partial pre-payment of these taxes before the distribution actually took place.

jurisprudence by treating changes in agency legal interpretations—no matter how retroactive or draconian—as completely outside that body of law. Respondent does not address or dispute any of this. Further, the *amicus curiae* brief that the Council on State Taxation has moved to file notes the widespread nature, and inconsistent lower-court treatment, of the problem the petition presents.

The Court should grant certiorari to clarify that the executive branch, like the legislative branch, is subject to due process constraints when the executive branch retroactively applies 180-degree changes in its formal, binding legal interpretations. At a minimum, this petition should be held pending resolution of *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, No. 08-1151. As the petition explains, if the Court concludes that judicial re-interpretation of common law can constitute a taking, that could easily have implications for whether retroactive agency re-interpretations of statutory law can similarly violate due process. For executive branch agencies to be the one branch of government immune from constitutional constraints on extreme retroactivity would be exceedingly odd, to say the least. Respondent has not replied to the point that, at minimum, this petition should be held.

Respectfully submitted,

Richard H. Pildes
Counsel of Record
Vanderbilt Hall Room 507
40 Washington Sq. So.
New York City, NY 10012
(212) 998-6377

Paul D. Clement
King & Spalding LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

Pedro E. Ortiz Alvarez
P.O. Box 9009
Ponce, PR 00732

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Supreme Court, U.S.
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No. 09-233

In the
Supreme Court of the United States

TRIPLE-S MANAGEMENT, CORP.;
TRIPLE-S SALUD, INC.,

Petitioners,

v.

MUNICIPAL REVENUE
COLLECTION CENTER (CRIM),

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth Of Puerto Rico

RESPONSE TO BRIEF OF THE UNITED STATES

PAUL D. CLEMENT
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

PEDRO E. ORTIZ ALVAREZ
P.O. Box 9009
Ponce, PR 00732

RICHARD H. PILDES
Counsel of Record
Vanderbilt Hall Room 507
40 Washington Sq. So.
New York City, NY 10012
(212) 998-6377

Counsel for Petitioners

June 11, 2010

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SUPPLEMENTAL RESPONSE

In response to this Court's invitation to file, the United States takes two remarkable positions. *First*, it asserts that the federal constitutional rights of residents of Puerto Rico can be denied without recourse to any federal court, including this Court, anytime the Puerto Rico Supreme Court declines to exercise discretion to hear those claims on the merits. *Second*, it argues that no constitutional limitations exist on the power of an administrative agency to change its interpretation of law retroactively—no matter how far back in time the agency reaches, no matter how onerous the consequences or how much that retroactive change defeats reasonable, investment-backed reliance, and no matter how formal, authoritative, or purportedly binding the agency's prior interpretation.

The breadth of these positions confirms the need for this Court's review. Both issues are of considerable importance. The jurisdictional issue goes to this Court's fundamental power to ensure uniformity of federal law throughout the United States. The merits issue affects the power of all agencies, federal and state, to impose unbounded retroactive obligations under the guise of reinterpreting law. On both issues, the United States is wrong. But at a minimum, before this Court were to accept either of the United States' positions on issues of such importance, it should grant plenary review.

I. This Court Has Jurisdiction Under 28 U.S.C. § 1258 And, To The Extent There Are Any Doubts, the Court Should Grant Review To Resolve Them.

The United States presents a new question for review: whether this Court lacks jurisdiction under 28 U.S.C. § 1258. The United States asserts that Congress has stripped this Court of jurisdiction to vindicate the federal constitutional and statutory rights of United States citizens in Puerto Rico, no matter how egregiously those rights are violated, if the Puerto Rico Supreme Court declines to exercise certiorari jurisdiction over a case.

A. Section 1258 Was Enacted to Extend Section 1257 to Puerto Rico.

1. Section 1258 provides that "[f]inal judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari" where the petitioner asserts a claim under federal law. Congress enacted Section 1258 in 1961 for one simple purpose: to ensure that "the final judgments or decrees of the Supreme Court of the Commonwealth of Puerto Rico shall be reviewed by the Supreme Court of the United States on certiorari or appeal in the same way as judgments of the supreme or highest courts of the several States of the Union are now reviewed by that Court." H.R. Rep. No. 683, 87th Cong., 1st Sess. 2 (1961) (*see* Appendix).

This change was supported by the Judicial Conference of the United States and the United States Department of Justice. All understood the

design, text, and effect of Section 1258 in the same way. In a statement appended to the House Committee report, Deputy Attorney General Byron R. White, in endorsing the legislation on behalf of the Justice Department, wrote: "The bill would give litigants in the Supreme Court of the Commonwealth of Puerto Rico the same rights of appeal and certiorari directly to the U.S. Supreme Court as are permitted to litigants in the highest court of the various States under section 1257 ..., and would finalize all other decisions of the Supreme Court of Puerto Rico." *Id.* at 4. Similarly, the Administrative Office of the U.S. Courts, endorsing the bill, wrote: "The proposed legislation would provide that judgments of the Supreme Court of Puerto Rico shall hereafter be reviewed by the Supreme Court of the United States on certiorari or appeal in the same way as judgments of the supreme or highest courts of the several States of the Union are now reviewed by that Court." *Id.* at 3. Section 1258 was thus designed to extend Section 1257 on the same terms to Puerto Rico: that was its entire point. Not a single suggestion to the contrary was ever made.

Similarly, since Congress enacted Section 1258 in 1961, authoritative commentators have also recognized it to do exactly what Congress intended: to extend Section 1257 on the same terms to Puerto Rico. Thus, the United States cites certain passages from "Stern and Gressman" but neglects to cite the section that directly addresses Section 1258. The opening line of that section states: "Since 1961, when 28 U.S.C. § 1258 was enacted, final judgments and decrees of the Supreme Court

of Puerto Rico have been reviewable in the same way as judgments of the highest courts of the various states are reviewable under 28 U.S.C. § 1257." GRESSMAN, *ET AL.*, SUPREME COURT PRACTICE 293 (9th ed. 2007). Similarly, Hart and Wechsler note that in 1961, "separate provisions parallel to § 1257 were adopted for review of the Supreme Court of the Commonwealth of Puerto Rico. See 28 U.S.C. § 1258." RICHARD H. FALLON, *ET AL.*, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 494 n. 10 (4th ed. 1996).

The reason for Section 1258's enactment was straightforward and recognized by all: in the 1950s, Congress had changed Puerto Rico's political and legal status from a territory to a self-governing Commonwealth. *See Examining Board v. Flores de Otero*, 426 U.S. 572, 594 (1976); *Cordova & Simonpietri Ins. Agency Inc. v. Chase Manhattan Bank N.A.*, 649 F.2d 36, 41-42 (1st Cir. 1981) (Breyer, J.). As this Court has recognized many times, Congress's purpose in creating the Commonwealth "was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union." *Examining Board*, 426 U.S. at 594. Since the Commonwealth's creation, this Court has routinely treated Puerto Rico like a State under numerous federal statutes and doctrines. *See id.* (Puerto Rico is a "state" for purposes of 28 U.S.C. 1343(3)); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974) (same for purposes of three-judge court Act); *Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 499 (1988).

Section 1258 was enacted in 1961 to affirm that Puerto Rico's status had also become equivalent to that of a State for purposes of this Court's review. Before then, decisions of the Puerto Rico Supreme Court were reviewable in the First Circuit initially and only then in this Court. *See* GRESSMAN, at 293. The entire context, history, and purpose for Section 1258's enactment makes clear that Section 1258 was designed to transform Puerto Rico's status to that of a State, for purposes of this Court's review, by extending Section 1257 to Puerto Rico.

2. The United States offers no intelligible reason why Congress would have wanted to strip this Court of jurisdiction—uniquely—over federal constitutional claims arising in Puerto Rico. *See* U.S. Br. 8 (the House Committee "did not explain its reasoning" for creating this hole in this Court's jurisdiction). As a substitute, the United States offers ahistorical speculation. Citing a 1923 decision, the United States argues that the system in Puerto Rico is different "from that which prevails here." *Id.* But while that was true in 1923, by 1961 the United States government, through all three of its branches, had recognized that Puerto Rico's relationship with the United States should be treated, for most legal purposes, as that of a State.

The United States offers only one piece of purported evidence to support its position. In his letter to the House Judiciary Committee, Deputy Attorney General White "suggested that it might be advisable to consider amending the bill in one respect," to clarify that Section 1258, like Section 1257, would grant this Court jurisdiction even

when the Puerto Rico Supreme Court had denied discretionary review (if the Puerto Rico Supreme Court had such discretion, a point on which he was uncertain). But the United States fails to note that Deputy Attorney General White endorsed the bill *as written* on the express understanding that it created exactly the same system of review as under Section 1257. As this Court has noted often, any number of reasons can explain why Congress fails to act in response to proposed amendments—let alone to suggested revisions offered by executive branch officials not as a condition of support but out of an abundance of caution.

The United States' construction of Section 1258 would, moreover, create strange anomalies. The statutes that govern review of the courts of Guam and of the Commonwealth of the Northern Mariana Islands permit this Court to exercise jurisdiction over a case such as this one, in which the local supreme court had denied certiorari and federal issues are presented. 48 U.S.C. §§ 1424-2, 1824. No conceivable explanation suggests why Congress would have treated Puerto Rico differently not only from the fifty States, but from Guam and the Northern Mariana Islands as well, with regard to this Court's ability to ensure uniform application of federal constitutional law.

Finally, the only time Congress has intended to strip this Court of jurisdiction in similar circumstances, it has done so through a clear statement in the text of a statute and for acknowledged reasons. Congress has provided that this Court "may not review by a writ of certiorari ... any action of the Court of Appeals for the Armed

Forces in refusing to grant a petition for review." 10 U.S.C. § 867a(a). In light of the special role of military courts, and the fact that collateral attacks on court-martial convictions remain available, Congress had recognizable reasons for limiting this Court's review. *See* GRESSMAN, at 127–34. But as Chief Justice Marshall established, this Court has never ruled that statutory ambiguities suffice to immunize a non-Article III court from even this Court's discretionary review in cases in which issues of federal law have been properly raised. *Durousseau v. United States*, 6 Cranch 307, 314 (1810) (any such withdrawal of jurisdiction must be "founded on the manifest intent of the legislature" and "can be made only where that manifest intent appears"). That powerful presumption of Article III review recognizes "the importance, and even necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347–48 (1816).

Consistent with this long history, the Court should require a clear statutory statement (a "manifest intent") before concluding that a statute strips this Court of jurisdiction to protect constitutional rights. Section 1258 lacks any such clear statement.

B. Should the Court Have Any Doubt Concerning Its Jurisdiction, It Should Grant Certiorari.

If this Court is inclined to give credence to the position of the United States on the limited scope of Section 1258, petitioners respectfully suggest that

the Court should grant certiorari and address this question fully. If the Court were to conclude that Section 1258 creates a legal black hole for federal rights in Puerto Rico, it should be in an express opinion that puts the current Congress, as well as other interested actors, on notice of this jurisdictional lacuna. If the Court simply denies certiorari in all cases in which the Puerto Rico Supreme Court has denied certiorari, those with a stake in this important issue will be left guessing as to whether such denials reflect the peculiar reading of Section 1258 the United States urges here or some other reason. This Court's important role in clarifying the meaning of federal law argues in favor of granting certiorari on the question the United States has presented and resolving that issue in a full, public opinion.

II. Due Process Imposes Limits on Retroactive Changes in Agency Interpretations of Law.

The United States acknowledges that the Puerto Rico courts and Respondent ran roughshod over Puerto Rico's statutes of limitations by reaching back 15 years. U.S. Br. 21 (calling lower court decisions "questionable"). The United States attests further that "it would be *extraordinary* for the" Internal Revenue Service to reach back 15 years to impose retroactive taxation, as in this case. *Id.* at 17 (emphasis added). We learn later, however, that this is solely a matter of executive grace. The United States maintains that Due Process does not impose any limits on an agency's power to change its mind retroactively about the

meaning of law. That is a dangerous misunderstanding that the Court should correct.

1. The United States suggests that retroactive agency interpretations of law should be treated identically to judicial adjudications, invoking cases from the 1930s, 1950s, and 1960s. *See id.* at 12. But these cases long pre-date this Court's modern understanding of the large discretion agencies have to make policy when they interpret law. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). For at least four reasons, the United States fails to appreciate the differences this Court has come to recognize between judicial and administrative interpretations of law, and the special risks agencies pose to the principles that inform this Court's retroactivity jurisprudence.

First, whether engaged in rulemaking or adjudication, agencies (unlike courts) are free to give a statute any of a number of reasonable interpretations, as long as not inconsistent with the statute's plain language. *See FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (2009). Indeed, the Puerto Rico courts give *Chevron*-like deference to agency interpretations of law. *See P.C.M.E. Commercial, S.E. v. Junta de Calidad Ambiental*, 166 D.P.R. 599, 614–618 (2005).

Second, and related, agencies have the power to make policy, and to change their policy views, when they engage in statutory interpretation. *See National Cable & Telecomms. Assn. v. Brand X Internet Services*, 545 U.S. 967 (2005). In this very case, the agencies expressly acknowledged that

they were adopting a "new public policy" in deciding that Triple-S would no longer be tax exempt. Pet. 18. When an agency adopts a new public policy in the guise of interpreting a statute, whether in adjudication or rulemaking, it is acting more like a legislature than a court.

Third, agencies are not bound by values of consistency or *stare decisis* in deciding whether new public-policy considerations warrant changing their interpretation of law. *See Fox Television, supra.* But courts operate under different rule-of-law constraints: *stare decisis* has exceptional force for courts once they have interpreted a statute, even more so when reliance interests are burdened. *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989).

Finally, agencies are permitted greater flexibility because of their greater political accountability, but that accountability presents risks of its own. Indeed, the Municipal Revenue Collection Center is governed by a nine-member Board, seven of whom are elected mayors (chosen through an election among all incumbent mayors). Four mayors are selected from the political party that won a majority of mayoralities throughout Puerto Rico; three come from the minority party. The remaining two members are existing officeholders of other offices to which the Governor has appointed them. 21 L.P.R.A. § 5804.

For these reasons, agency retroactivity poses greater risks than judicial adjudication, including risks analogous to those this Court has identified with legislative retroactivity. Given the political

environment in which they sometimes operate, as in this case, agencies, like legislatures, may be "tempt[ed] to use retroactive legislation as a means of retribution against unpopular groups or individuals." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994). Similarly, if retroactive agency interpretations, like retroactive laws, "change the legal consequences of transactions long closed, the change can destroy the reasonable certainty and security which are the very objects of property ownership." *Eastern Enters. v. Apfel*, 524 U.S. 498, 548–49 (1998) (Kennedy, J., concurring in the judgment and dissenting in part). In the face of these risks, it would make little sense for the Court to enforce limits on legislative retroactivity, but to give agencies carte blanche to change their legal interpretations retroactively, regardless of justification or circumstance.

2. The United States inaccurately suggests that Triple-S makes no effort to explain how it could have qualified for tax exempt status in the original agency rulings. U.S. Br. 13. But, as the petition explains, Triple-S was originally organized to provide pre-paid, low-cost medical and hospital insurance in Puerto Rico, a service strongly supported by the government of Puerto Rico. Despite operating as a non-profit in fact, Triple-S was forced to incorporate formally as a for-profit entity by then-existing law regarding insurance providers. Pet. 4. Taking a purposive approach to interpreting the tax code, the Puerto Rico Department of Treasury concluded that, as long as Triple-S complied with dozens of conditions to ensure it continued to operate in fact as a non-

profit, the health insurance services Triple-S provided qualified it for tax-exempt status.

The United States also suggests that petitioner is just an unfortunate victim of a mistaken statute of limitations ruling. But the question is not what limits government imposes on its own efforts to collective retroactive levies, but whether the Constitution places any limits on the government's ability to impose retroactive obligations anytime the government has changed its mind. As the *amicus curiae* brief of the Council on State Taxation explains (and as this case confirms), statutes of limitations or appeals to regulatory mercy and discretion are insufficient in many contexts. Constitutional Due Process constraints, in the retroactivity context as in others, exist when ordinary legal mechanisms fail to protect the investment-backed reliance and fairness interests central to this Court's retroactivity cases.

Finally, the suggestion that petitioners are seeking "a categorical ban on retroactive revocation of letter rulings," U.S. Br. 17, gets matters backwards. It is the United States that takes a categorical position, arguing that Due Process imposes no constraints, under any circumstances, when an agency retroactively changes its legal interpretation. That is a dangerous proposition for the branch of government responsible for all federal agencies to embrace. The case for this Court's plenary review was set forth in the petition. That the Executive Branch believes its agencies are unconstrained by the Constitution in their power to change course retroactively only underscores the need for this Court's review.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

Richard H. Pildes
Counsel of Record
Vanderbilt Hall Room 507
40 Washington Sq. So.
New York City, NY 10012
(212) 998-6377

Paul D. Clement
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

Pedro E. Ortiz Alvarez
P.O. Box 9009
Ponce, PR 00732

June 11, 2010

APPENDIX

APPENDIX INDEX

H.R. Rep. No. 683,
87th Cong., 1st Sess. 2 (1961) App-1

87th Congress, 1st Session
HOUSE OF REPRESENTATIVES
Report No. 683

APPEALS FROM THE SUPREME COURT OF PUERTO RICO

July 10, 1961. Referred to the House Calendar and ordered to be printed

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Mr. Rodino, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 7038]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7038) to eliminate the right of appeal from the Supreme Court of Puerto Rico to the Court of Appeals for the First Circuit, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to eliminate the right of appeal from the Supreme Court of Puerto Rico to the Court of Appeals for the First Circuit and to provide that final judgments and decrees entered by the Supreme Court of Puerto Rico shall be reviewed instead by the Supreme Court of the United States.

GENERAL STATEMENT

Under existing law (28 U.S.C. 1293, 1294), final judgments and decrees of the Supreme Court of the Commonwealth of Puerto Rico are reviewable by the Court of Appeals for the First Circuit. That court has jurisdiction to review cases which present either Federal or non-Federal questions. In practice, however, in cases involving non-Federal questions, the Court of Appeals of the First Circuit will not reverse the Supreme Court of the Commonwealth of Puerto Rico upon a point of local law unless the decision is "inescapably wrong or patently erroneous." Cases from the Supreme Court of the Commonwealth of Puerto Rico which present Federal questions and are reviewed by the court of appeals are reviewable in the Supreme Court of the United States pursuant to the provisions for review of the decisions of the courts of appeals.

Under the provisions of this bill, the final judgments or decrees of the Supreme Court of the Commonwealth of Puerto Rico shall be reviewed by the Supreme Court of the United States on certiorari or appeal in the same way as judgments of the supreme or highest courts of the several States of the Union are now reviewed by that Court.

It appears that in 1915 when Congress amended the law giving direct appeals to the Supreme Court of the United States from the decisions from the Supreme Court of Puerto Rico, and conferring such jurisdiction upon the Court of Appeals for the First Circuit as an intermediate

court of appeals, it did so with the idea of relieving the Supreme Court of the United States of what was then supposed to be an undue burden. Now, however, it appears that the number of cases to review judgments of the Supreme Court of Puerto Rico filed in the Court of Appeals for the First Circuit is not large. The records of the Administrative Office of the U.S. Courts show that these cases have ranged from 5 to 10 for the last 5 fiscal years and only 7 such appeals were filed in the Court of Appeals for the First Circuit for the fiscal year 1960. Obviously, therefore, the enactment of this proposal would place no undue burden upon the Supreme Court of the United States.

The enactment of this proposal appears to be appropriate in view of the change in the status of Puerto Rico from that of a territory to that of an associated commonwealth under the Act of Compact. The Court of Appeals for the First Circuit recognized the situation in 1956 in an opinion by Chief Judge Magruder, speaking for a unanimous court in *Figueroa v. People of Puerto Rico* (232 Fed. 2d 615):

> Perhaps it can be said that in view of the present Commonwealth status of Puerto Rico it would be more appropriate if the judgments of the Supreme Court of Puerto Rico were reviewable only in the Supreme Court of the United States, on the same basis of jurisdiction as is presently given to the Supreme Court of the United States to review judgments of the highest court of a State. The

> Congress, however, has not seen fit to provide for such direct review in the Supreme Court of the United States; it may be that this is one of those loose ends left unprovided for in Public Law 600 which the Congress will tidy up in due time by further legislation.

Under the first section of the bill, a new section is added to chapter 81 of the United States Code providing the procedure for appeals from the Supreme Court of Puerto Rico to the Supreme Court of the United States by certiorari or appeal in the same manner as appeals are now taken from the highest courts of the States.

The provision of section 2 of the bill is merely a technical amendment.

Under section 3 of the bill, section 1293 of title 28, United States Code, is repealed with the proviso that cases in which appeals have been taken prior to the effective date of this act shall remain within the jurisdiction of the Court of Appeals for the First Circuit. The provisions contained in sections 4 and 5 are technical amendments which must be made to title 28 in view of the changes made by this act.

This proposal was recommend by the Judicial Conference of the United States first in 1957 in the 85th Congress and again in the 88th Congress. A special subcommittee of the Committee on the Judiciary held hearings on a similar proposal in the Commonwealth of Puerto Rico in 1958. The Judicial Conference in a letter to the Speaker, dated May 8, 1961, renewed its recommendations for the enactment of this bill.

The enactment of this bill will not impose any additional liability on the part of the Federal Government.

Attached hereto and made a part of this report is the letter addressed to the Speaker, dated May 8, 1961, and a report of the Department of Justice.

No. 09-233

In the Supreme Court of the United States

TRIPLE-S MANAGEMENT CORPORATION, ET AL.,
PETITIONERS

v.

MUNICIPAL REVENUE COLLECTION CENTER

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

NEAL KUMAR KATYAL
Acting Solicitor General
Counsel of Record

JOHN A. DICICCO
Acting Assistant Attorney General

MALCOLM L. STEWART
Deputy Solicitor General

ERIC D. MILLER
Assistant to the Solicitor General

TERESA E. MCLAUGHLIN
ANDREW M. WEINER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction under 28 U.S.C. 1258 to review a decision of the Puerto Rico Court of Appeals that the Supreme Court of Puerto Rico declined to review.

2. Whether respondent violated the Due Process Clause by retroactively revoking a property-tax exemption that it had recognized in administrative letter rulings issued to petitioners.

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In the Supreme Court of the United States

No. 09-233

TRIPLE-S MANAGEMENT CORPORATION, ET AL.,
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v.

MUNICIPAL REVENUE COLLECTION CENTER

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. Petitioner Triple-S Salud, Inc. (Triple-S) was organized in Puerto Rico in 1959 as a for-profit health insurer. Pet. App. 48-49. It sought a statutory income-tax exemption applicable to "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." P.R. Laws Ann. tit. 13, § 3101(8) (1976) (repealed 1994); see Pet. App. 49. In 1979, the Puerto Rico Department of Treasury (Treasury) issued a letter ruling declaring that Triple-S would be entitled to that exemption if it agreed to operate as a

nonprofit organization and treat its income accordingly. *Id.* at 50, 139-140.

In 1987, Treasury issued another letter ruling, this time declaring that Triple-S was also exempt from personal and real property tax. Pet. App. 143. At the time, the governing statute exempted from taxation "[p]ersonal and real property belonging to any nonprofit association organized under the laws of Puerto Rico with the object of selling promoted programs or plans of medical and hospital services." P.R. Laws Ann. tit. 13, § 551(t) (Supp. 1987) (repealed 1991). Treasury stated that the exemption was granted "under the same conditions imposed in the prior administrative determinations." Pet. App. 143-144.

In 1991, the Puerto Rico legislature transferred the administration of property taxes to respondent, a newly created agency. Pet. App. 18-19. It also amended the property-tax scheme. *Id.* at 19. The current statute exempts from real and personal property taxation property owned by a "nonprofit association organized under the laws of Puerto Rico for the purpose of selling prepaid programs or plans for medical and hospital services." P.R. Laws Ann. tit. 21, § 5151(g) (Supp. 2008).

In 1998, Treasury again affirmed Triple-S's income-tax exemption. Pet App. 151. Respondent similarly reaffirmed Triple-S's property-tax exemption. *Id.* at 163.

On July 31, 2003, however, Treasury revoked Triple-S's income-tax exemption, effective January 1, 2003, based on a "new public policy" of construing the relevant Puerto Rico statute to confer exempt status only on "entities organized for non-profit purposes." Pet. App. 175. The same day, Treasury and Triple-S executed an agreement under which Triple-S accepted the revocation of its tax exemption and agreed to pay income tax on its

earnings for the entire taxable year 2003. *Id.* at 170, 172. In addition, Triple-S's parent agreed to pay income tax on an imputed dividend, treated as paid by Triple-S on December 31, 2002, of earnings and profits accumulated between July 1, 1979, and December 31, 2002. *Id.* at 171. The agreement was silent as to property taxes.

On February 1, 2006, respondent revoked Triple-S's property-tax exemption. Pet. App. 177-178. It explained that "the 1987 administrative determination by the Treasury Department and the 1998 determination of [respondent] to grant [a property-tax] exemption to Triple-S * * * were erroneous and did not generate any right in its favor." *Id.* at 178-179. Accordingly, respondent revoked the exemption, effective as of the date of respondent's creation in 1991. *Id.* at 178. Respondent demanded payment of approximately $4 million in personal property taxes and $1.3 million in real property taxes. *Id.* at 46, 52, 74.

2. In separate actions brought in the Court of First Instance in San Juan, Triple-S challenged the retroactive revocation of its real and personal property-tax exemptions. The Court of First Instance entered summary judgment for respondent in both cases. Pet. App. 46-67, 70-88.

The Court of First Instance concluded that the initial recognition of Triple-S's tax exemption had been granted "in total contravention of the clear language of the law" and was therefore *ultra vires*. Pet. App. 65. Accordingly, the court determined that respondent did "not have to honor the previous determinations of the Department of the Treasury" and could give retroactive effect to the revocation of those determinations. *Id.* at 65-66. The court also held that the imposition of retroactive liability was consistent with the applicable stat-

utes of limitations. With respect to personal property taxes, the court agreed with respondent that the four-year statute of limitations governing tax deficiencies did not apply to the tax at issue, which was not based on "a determination of deficiency detected after an audit." *Id.* at 87; see P.R. Laws Ann. tit. 21, § 5218 (2005). With respect to real property taxes, Triple-S had requested discovery to establish a statute-of-limitations defense, Pet. App. 15, but the court rejected that request, holding that there was "no real controversy over the essential facts," *id.* at 55.

3. In consolidated appeals, the Court of Appeals for the San Juan Region affirmed. Pet. App. 1-42. The court stated that "[t]here is no doubt that the provisions pursuant to which Triple S was granted the tax exemptions from 1976 to 2003 did not allow the concession of such benefits to for-profit entities." *Id.* at 37. The property-tax exemption that had nevertheless been granted to Triple-S, the court concluded, therefore was an *ultra vires* act. *Id.* at 39. The court explained that, under Puerto Rico law, "*ultra vires* acts by public officials do not create rights, do not obligate the administrative organism, nor do they impede it from effectuating a correction." *Ibid.* The court noted that respondent had a statutory obligation to appraise and add property to the tax rolls upon becoming aware of its omission, and it reasoned that, "[f]aced with the clarity and lack of ambiguity of this provision," respondent had a duty to collect Triple-S's unpaid property taxes. *Id.* at 40.

The court of appeals further held that respondent's collection of personal property taxes from Triple-S was not barred by the four-year statute of limitations contained in P.R. Laws Ann. tit. 21, § 5218 (2005). In the court's view, that provision did not apply because re-

spondent had made no "revision" of the tax forms filed by Triple-S, but had merely "demanded" payment of taxes that Triple-S had reported but had not paid (because of its tax-exempt status). Pet. App. 41. The court concluded that respondent was entitled to summary judgment on the limitations issue because the relevant documents "did not raise any legitimate controversy of material and essential facts." *Ibid.*

4. The Supreme Court of Puerto Rico denied certiorari. Pet. App. 89-92. That court subsequently denied two motions filed by respondent seeking reconsideration of the denial of certiorari. *Id.* at 93-100.

DISCUSSION

This Court lacks jurisdiction over the petition because the highest court to consider the merits of petitioners' claims was the Puerto Rico Court of Appeals, and no statute authorizes this Court to review the decisions of that court. Under 28 U.S.C. 1258—the jurisdictional provision on which petitioners rely—this Court may review only the judgments of the Supreme Court of Puerto Rico. That court, however, declined to hear this case. At a minimum, the procedural history of the case raises a serious question as to this Court's jurisdiction, making the case a poor vehicle for considering the due process issues petitioners seek to raise.

In any event, petitioners have raised no issue warranting this Court's review. The Due Process Clause does not prevent an agency from correcting an error in its interpretation of the law simply because doing so will disadvantage parties that relied on the error. Petitioners contend that respondent's revocation of their tax exemption violated the Due Process Clause because that agency action contradicted a letter ruling on which

petitioners had relied. That letter ruling, however, expressly provided that it could be revoked in respondent's discretion. Petitioners also argue that respondent reached too far back into the past in imposing tax liability on them. The Puerto Rico courts determined, however, that respondent's demand for back taxes was made within the applicable limitations period. The lower courts' interpretation of the local statute of limitations may have been mistaken, but any such error was one of Puerto Rico law, and petitioners identify no basis for treating it as an error of constitutional dimension.

A. **This Court Lacks Jurisdiction**

Petitioners have invoked (Pet. 1) this Court's jurisdiction under 28 U.S.C. 1258, which states that "[f]inal judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari" where the petitioner asserts a claim under federal law. Although the petition purports to seek "a writ of certiorari to review the judgment of the Supreme Court of Puerto Rico" (Pet. 1), the Supreme Court of Puerto Rico did not exercise jurisdiction over this case; it merely denied certiorari. Pet. App. 89-92; see P.R. Laws Ann. tit. 4, § 24s(d) (Supp. 2008) (specifying that writs of certiorari are "to be issued discretionally" by the Supreme Court of Puerto Rico). What petitioners are actually asking this Court to review is the decision of the Puerto Rico Court of Appeals, and Section 1258 does not authorize such review.

In that respect, Section 1258 is different from 28 U.S.C. 1257(a), which governs this Court's review of state-court judgments. Under Section 1257(a), this Court's jurisdiction is not limited to review of rulings is-

sued by state supreme courts. Rather, that statute authorizes certiorari review of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had."

When a state supreme court denies discretionary review, the highest state court "in which a decision could be had" is the highest court to exercise jurisdiction—usually an intermediate appellate court. In such a case, the writ of certiorari is directed to the intermediate court. Eugene Gressman et al., *Supreme Court Practice* § 3.14, at 180 (9th ed. 2007) (Gressman) ("An order of a court of last resort declining to review a case is not ordinarily the judgment that is reviewable under §1257(a); in that event, the reviewable judgment is that of the highest court possessing and exercising jurisdiction."); see *Interstate Circuit, Inc.* v. *City of Dallas*, 390 U.S. 676, 678 n.1 (1968); *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 159-160 (1954); *American Ry. Express Co.* v. *Levee*, 263 U.S. 19, 20-21 (1923). Because Section 1258 does not similarly refer to the highest Puerto Rico court "in which a decision could be had," the decision of the Puerto Rico Court of Appeals is not reviewable here.

That reading is confirmed by the course of events preceding Section 1258's enactment in 1961. Before Section 1258 was enacted, the First Circuit had jurisdiction over appeals from certain "final decisions of the supreme court[] of Puerto Rico." 28 U.S.C. 1293 (1958). In construing former Section 1293, the First Circuit emphasized the distinction between its language and that of Section 1257. *International Basic Econ. Corp.* v. *Blanco Lugo*, 267 F.2d 263, 264 (1959) (per curiam). The First Circuit acknowledged that the Puerto Rico Supreme Court's denial of discretionary review "is a 'final

decision,' appealable to this court," but it went on to observe that "since the review sought in the Supreme Court of Puerto Rico was available only in its discretion, that court's action in denying the petition could be set aside by us only upon a finding of abuse of discretion." *Id.* at 265.

When it enacted Section 1258 two years later, Congress retained former Section 1293's reference to review of decisions of the Puerto Rico Supreme Court rather than adopting the broader language of Section 1257. In a letter to the House Judiciary Committee, then-Deputy Attorney General Byron White noted the difference between the provisions and suggested that "it might be advisable to consider amending the bill" that became Section 1258 to conform it to Section 1257 by "substitut[ing] the language 'highest court of the Commonwealth of Puerto Rico in which a decision could be had' for the words 'Supreme Court of the Commonwealth of Puerto Rico.'" H.R. Rep. No. 683, 87th Cong., 1st Sess. 4 (1961). No such amendment was made. Instead, while the House Committee stated that the bill would allow "final judgments or decrees of the Supreme Court of the Commonwealth of Puerto Rico [to] be reviewed by the Supreme Court * * * in the same way as judgments of the supreme or highest courts of the several States of the Union are now reviewed," it pointedly omitted any reference to inferior Puerto Rico courts. *Id.* at 2. That omission is particularly significant in light of the limited reading that the First Circuit had recently given Section 1258's statutory predecessor. Although the Committee did not explain its reasoning, it is hardly surprising that Congress would have chosen to provide for a more limited review of the decisions of courts "inheriting and brought up in a different system from that which pre-

vails here." *Diaz* v. *Gonzales*, 261 U.S. 102, 105-106 (1923) (Holmes, J.).[1]

Thus, the only question that petitioners could properly bring before this Court is whether the Puerto Rico Supreme Court abused its discretion—and in doing so somehow violated federal law—when it denied certiorari. Petitioners have not sought review of that question, however, and it would not warrant this Court's review in any event. This Court lacks jurisdiction to consider the questions petitioners have raised.[2]

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[1] Insofar as it authorizes this Court to review only those Puerto Rico cases in which the Supreme Court of Puerto Rico has actually ruled on the merits, Section 1258 is not unique. Under 28 U.S.C. 1259, this Court's certiorari jurisdiction extends to certain cases in which the Court of Appeals for the Armed Forces has reviewed the decision of an inferior military tribunal, but this Court "may not review by a writ of certiorari * * * any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review." 10 U.S.C. 867a(a); see Gressman § 2.14, at 128.

[2] In *Posadas de Puerto Rico Assocs.* v. *Tourism Co.*, 478 U.S. 328 (1986), this Court concluded that it had jurisdiction to review a decision of the Puerto Rico Supreme Court dismissing an appeal for want of a substantial question. *Id.* at 338. The Court based that conclusion, however, on its determination that the Puerto Rico Supreme Court's dismissal of the appeal "constituted a decision on the merits." *Ibid.* In this case, by contrast, the Puerto Rico Supreme Court simply denied discretionary review. See *Sociedad Legal de Gananciales* v. *Pauneto Rivera*, 130 P.R. Dec. 749, 755 (1992), *translated in* 1992 WL 755587 (P.R.) (Puerto Rico Supreme Court explains that its "refusal to issue a writ of certiorari does not mean that the Court has assumed a position with regard to the merits of the cause").

B. The Due Process Clause Permits An Administrative Agency To Give Retroactive Effect To A Decision Correcting An Erroneous Interpretation Of The Law

Petitioner correctly acknowledges (Pet. 19) that the principles "that limit legislative retroactivity" do not "apply identically in the administrative context." Indeed, legislative, judicial, and administrative retroactivity each present different issues of statutory construction and constitutional law. As relevant here, however, petitioners have identified no authority for the proposition that the Due Process Clause prevents an agency from correcting an error in its interpretation of the law simply because doing so will disadvantage parties that have relied on the error.

1. This Court has observed that "statutory retroactivity has long been disfavored." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 268 (1994). For that reason, legislation generally is presumed to have only prospective effect unless Congress has clearly called for retroactive application. *Id.* at 272-273. At the same time, "the *constitutional* impediments to retroactive civil legislation are * * * modest." *Id.* at 272. If Congress clearly states its intention that a new statute will apply to past events, such retroactive application does not offend the Due Process Clause as long as it "is supported by a legitimate legislative purpose furthered by rational means," *Pension Benefit Guar. Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984), even if the new legislation imposes "liability [that] * * * was not anticipated" or "upsets otherwise settled expectations," *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976).

2. Retroactive judicial decisionmaking is subject to even fewer constitutional constraints. The general rule in civil litigation is that, when a court "applies a rule of

federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate [the] announcement of the rule." *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993). That approach reflects the principle that "[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Rivers* v. *Roadway Express, Inc.*, 511 U.S. 298, 312-313 (1994); see *Harper*, 509 U.S. at 107 (Scalia, J., concurring) (noting that the "original and enduring American perception of the judicial role sprang * * * from the jurisprudence of Blackstone, which viewed retroactivity as an inherent characteristic of the judicial power, a power 'not delegated to pronounce a new law, but to maintain and expound the old one'") (quoting 1 William Blackstone, *Commentaries* *69).

3. Administrative agencies perform both quasi-legislative and quasi-judicial functions. Agency rulemaking resembles legislation in that it establishes new rules of conduct, while agency adjudication resembles judicial decisionmaking insofar as it interprets existing statutes and rules. The proper analysis of agency action with retroactive effects depends on the precise nature of the action at issue.

Given the diversity of agencies and agency actions, this Court has refrained from prescribing a general rule governing administrative retroactivity. At one end of the spectrum, "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in ex-

press terms." *Bowen* v. *Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). By contrast, when agencies interpret statutes or rules in adjudicatory proceedings, they generally may apply their new interpretations to the parties to the adjudication, even though doing so gives those interpretations retroactive effect. *SEC* v. *Chenery Corp.*, 332 U.S. 194, 203-204 (1947).

When an agency corrects a mistaken interpretation of the governing statute, its action closely resembles a judicial interpretation. See *Manhattan Gen. Equip. Co.* v. *Commissioner*, 297 U.S. 129, 135 (1936) (an agency's correction of a mistake of law "is no more retroactive in its operation than is a judicial determination construing and applying a statute to a case at hand"). The Due Process Clause does not preclude agencies from applying such a correction to parties who acted before the correction was announced. This Court has long held, for example, that the Commissioner of Internal Revenue "is empowered retroactively to correct mistakes of law in the application of the tax laws to particular transactions," and that the Commissioner "may do so even where a taxpayer may have relied to his detriment on the Commissioner's mistake." *Dixon* v. *United States*, 381 U.S. 68, 72-73 (1965); accord *Automobile Club* v. *Commissioner*, 353 U.S. 180, 183-184 (1957); see *Commissioner* v. *Miller*, 914 F.2d 586, 591-592 (4th Cir. 1990); *Becker* v. *Commissioner*, 751 F.2d 146, 150 (3d Cir. 1984); *Wisconsin Nipple & Fabricating Corp.* v. *Commissioner*, 581 F.2d 1235, 1239 (7th Cir. 1978); *Etter Grain Co.* v. *United States*, 462 F.2d 259, 265 (5th Cir. 1972). Like judicial interpretation, an administrative correction of such a mistake does not *change* the applicable law, but rather gives effect to the law as it existed when the relevant transaction (or other regulated conduct) occurred.

C. Petitioners' Due Process Challenges To The Agency Interpretation At Issue Here Do Not Warrant This Court's Review

Because it involved only the correction of a mistaken interpretation of the governing Puerto Rico statute, respondent's action in this case did not violate the Due Process Clause. Respondent retroactively revoked Triple-S's tax-exempt status on the ground that "the 1987 administrative determination by the Treasury Department and the 1998 determination of [respondent] to grant [a property tax] exemption to Triple-S * * * were erroneous." Pet. App. 178-179. Respondent explained that Triple-S, being a for-profit corporation, could not have been entitled to statutory exemptions for "nonprofit" entities. *Id.* at 178. The Puerto Rico Court of Appeals agreed, holding that the property-tax exemptions granted to Triple-S were "in clear conflict with" the statute and were "no doubt" based on a mistake of law. *Id.* at 37.

Petitioners do not appear to dispute the Puerto Rico courts' conclusion that the grant of tax exemptions to Triple-S was erroneous. In particular, petitioners make no effort to explain how Triple-S could have qualified for the exemptions under the plain language of the applicable Puerto Rico statute. Respondent's effort to collect back taxes for the years 1991-2006 thus does not represent an attempt to *change* the law retroactively; respondent simply sought to enforce the Puerto Rico tax laws as they existed during the years in question.

Rather than contending that Triple-S was actually entitled to tax-exempt status under the law in effect from 1991 to 2006, petitioners base their due process claim on two arguments. First, they assert (Pet. 24-30) that Treasury's prior letter rulings contained binding

assurances that any change in Triple-S's tax-exempt status would not be given retroactive effect. Second, they argue (Pet. 30-32) that, even if *some* retroactive application of respondent's new legal understanding is permissible, respondent's attempt to collect 15 years of back taxes is unconstitutionally harsh and oppressive. Neither contention warrants this Court's review.

1. Petitioners were on notice that Treasury's letter rulings were subject to retroactive revocation

Petitioners correctly observe (Pet. 22-23) that the authority of respondent and the Puerto Rico Treasury to issue letter rulings is similar to that of the federal Commissioner of Internal Revenue. Petitioners misunderstand the effect of such rulings, however. When the Commissioner determines that a prior ruling was erroneous and therefore decides to revoke it, his usual practice is to give the revocation solely prospective effect. That approach encourages taxpayers to seek and rely upon agency letter rulings. The governing statutes and regulations make clear, however, that such rulings are not categorical promises and that the agency retains the authority, when appropriate, to adopt a new interpretation and to apply it retroactively. The exercise of that authority is subject to review for abuse of discretion, but it raises no constitutional concerns.

a. A letter ruling issued by the IRS is "a written statement issued to a taxpayer * * * which interprets and applies the tax laws to a specific set of facts." 26 C.F.R. 601.201(a)(2); accord Rev. Proc. 2010-1, § 2.01, 2010-1 I.R.B. 1, 6. Letter rulings are issued for the benefit of taxpayers seeking to engage in transactions whose tax consequences are not clear from other published guidance. The Commissioner formally announced

the letter-ruling program in 1953. See Rev. Rul. 10, 1953-1 C.B. 488. Before then, the only way for taxpayers to obtain advance rulings was to ask the IRS to enter into a formal "closing agreement," a cumbersome process for both sides. See Mortimer M. Caplin, *Taxpayer Rulings Policy of the Internal Revenue Service: A Statement of Principles*, N.Y.U. 20th Inst. on Fed. Tax. 1, 4-5 (1962). Closing agreements are binding on the Commissioner absent "fraud or malfeasance, or misrepresentation of a material fact." 26 U.S.C. 7121(b); Rev. Proc. 2010-1, § 2.02, 2010-1 I.R.B. at 7.

Letter rulings are not similarly binding. Under 26 U.S.C. 7805(b)(8), "[t]he Secretary may prescribe the extent, if any, to which any ruling * * * shall be applied without retroactive effect." Treasury regulations provide that a letter ruling, "except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes." 26 C.F.R. 601.201(l)(1). Under that approach, any "revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the revocation or modification." *Ibid.*

When the Commissioner seeks to correct a ruling that mistakenly interpreted the law, he is empowered to do so retroactively, even when the taxpayer relied on the Commissioner's mistake. *Dixon*, 381 U.S. at 72-73. Nevertheless, unless the taxpayer has omitted or misstated material facts, or the applicable law has changed, the Commissioner exercises that authority only in "unusual circumstances." 26 C.F.R. 601.201(l)(5); see 26 C.F.R. 601.201(n)(6)(i) (providing that changes to exempt status "will ordinarily take effect no later than the

time at which the organization received written notice that its exemption ruling [or] determination letter might be revoked or modified"); accord Rev. Proc. 2010-9, § 12.01, 2010-2 I.R.B. 258, 267.

Although the Commissioner's policy is intended to encourage reliance on letter rulings, apart from the stated conditions, the Commissioner maintains only that he "generally" or "ordinarily" will not revoke letter rulings retroactively. Contrary to petitioners' suggestion (Pet. 23), the Commissioner retains the discretion to revoke letter rulings retroactively when he concludes that such action is warranted. Indeed, the law requires that the Commissioner consider retroactivity on a case-by-case basis. See *IBM* v. *United States*, 343 F.2d 914, 919-920 (Ct. Cl. 1965), cert. denied, 382 U.S. 1028 (1966). The Commissioner's discretion is essential to the letter-ruling program since it allows him to review complex issues of tax law and to provide guidance, within a short time frame, precisely because the positions set out in such guidance are not immutable. Letter rulings thus strike "a fair balance between the present need of taxpayers for advance, rapid, and reliable information in regard to future transactions and the need of the Service to limit both the possible loss to the revenue resulting from a mistake in interpretation and the difficulties that might result from a premature freezing of Service position." Mitchell Rogovin & Donald L. Korb, *The Four R's Revisited: Regulation, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 Duquesne L. Rev. 323, 346 (2008).

Courts review the retroactive revocation of letter rulings for abuse of discretion, in the same manner that they review other discretionary administrative actions. See *Automobile Club*, 353 U.S. at 184-185. To be sus-

tained, the Commissioner's decision to give a revocation retroactive effect "must be a rational one, supported by relevant considerations." *Chock Full O' Nuts Corp* v. *United States*, 453 F.2d 300, 302 (2d Cir. 1971) (quoting *IBM*, 343 F.2d at 920); see *Anderson, Clayton & Co.* v. *United States*, 562 F.2d 972, 981 (5th Cir. 1977) (summarizing circumstances where courts have declined to give a ruling or regulation retroactive effect), cert. denied, 436 U.S. 944 (1978).

b. Because of the Commissioner's general policy of not retroactively revoking rulings issued in error, the statutory requirement that the Commissioner exercise sound discretion in deciding issues of retroactivity, and (in particular) the Commissioner's inability to collect unpaid taxes beyond the statutory limitations period (see note 4, *infra*), it would be extraordinary for the Commissioner retroactively to revoke a taxpayer's tax exemption and then seek to recover taxes for the prior 15 years, as occurred in this case. But constitutionalizing those limits on the retroactive revocation of letter rulings would disrupt the fact-intensive analysis undertaken by the Commissioner and the courts in addressing the issue, and it would threaten the balance of interests struck by the letter-ruling program. As petitioners point out (Pet. 29-30), if the Commissioner regularly revoked letter rulings after the relevant transactions had occurred, the purposes of the letter-ruling program would be subverted because taxpayers would likely cease to request and rely on such rulings in the future. But a categorical ban on retroactive revocation of letter rulings would be no less harmful, because it would discourage the Commissioner from issuing letter rulings for fear of being bound by an improvidently made ruling. The advantages of the rulings program would be lost,

forcing a return to the days when closing agreements were taxpayers' only option for obtaining advice from the agency. That approach proved unworkable over 50 years ago and would only be more so today.

c. At the time it issued the letter rulings granting a property-tax exemption to Triple-S, Treasury had authority similar to that of the Commissioner: a general power to prescribe rules and regulations necessary to enforce the tax law, P.R. Laws Ann. tit. 13, § 3429(a)(1) (1976) (repealed 1994), and more specific authority to determine what rules and regulations "shall be applied without retroactive effect," *id.* § 3429(b) (repealed 1994). In addition, Treasury had published Circular Letter 86-3, adopting an approach to the retroactive revocation of letter rulings similar to that of the Commissioner. Specifically, Treasury stated that "[a] ruling or administrative determination found either to have been issued in error or * * * not in accord with the current views of the Department may be modified or revoked." Pet. App. 186. Circular Letter 86-3 further informed taxpayers that if the facts as represented to Treasury were not materially different from the actual facts, there had been no intervening change in the law, the taxpayer had relied on the ruling in good faith, and retroactive revocation would be detrimental, then any subsequent revocation or modification would not be retroactive "[e]xcept in rare or unusual circumstances." *Id.* at 187.

Like the Commissioner, however, Treasury declined to offer taxpayers any categorical assurance that letter rulings issued in error would not be revoked retroactively. To the contrary, Treasury specifically reserved its right to pursue that course of action "in rare or unusual circumstances." The question whether the revoca-

tion at issue here was permissibly given retroactive effect is not of constitutional dimension but turns only on whether the agency abused its discretion. See *Automobile Club*, *supra*. Thus, if it was otherwise permissible for respondent to apply to earlier tax years its new understanding that Triple-S was not entitled to exempt status under the applicable Puerto Rico statute, nothing in the letter rulings precluded (let alone *constitutionally* precluded) respondent from taking that action.[3]

2. Any error in the lower courts' interpretation of the Puerto Rico statutes of limitations would not warrant review

As explained above, when an agency corrects a mistaken legal interpretation and gives that correction retroactive effect, it is merely clarifying the law that was in effect at the time of the relevant transaction, and its action does not violate the Due Process Clause. Limits on the length of time for which unpaid back taxes may be collected in such circumstances are imposed not by the Constitution, but by statutes of limitations.[4] In this

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[3] Perhaps because petitioners framed their challenge in constitutional terms, rather than arguing that respondent had abused its discretion as a matter of Puerto Rico administrative law, the courts below did not focus on whether "rare or unusual circumstances" justified retroactive revocation in this case. Both the trial court and the intermediate appellate court concluded, however, that Treasury's prior grant of tax-exempt status to Triple-S was so devoid of support in the relevant statute as to be *ultra vires*. See Pet. App. 39, 66. That sort of gross deviation from statutory requirements is presumably "rare or unusual" within the common understanding of those terms.

[4] In the federal tax context, for example, the Commissioner's ability to assess liability based on the retroactive revocation of letter rulings is subject to a statute of limitations that generally requires the Commissioner to assess a tax within three years after a taxpayer has filed a

case, the Puerto Rico Court of Appeals declined to apply the statutes of limitations on assessment of real and personal property taxes. Although the court's limitations analysis is open to question, any error was one of Puerto Rico law that does not provide a basis for review by this Court.

In the case of real property, the governing Puerto Rico statute requires respondent to keep the tax rolls up to date by making a continuous review of property and by appraising and adding to the list previously unappraised property. P.R. Laws Ann. tit. 21, § 5058 (2005). The statute further provides that "[t]he levy, notice and collection of [such] taxes * * * shall only be retroactive for five (5) years from the date said property was appraised." *Ibid.* In this case, Triple-S invoked that statute of limitations, contending that respondents' claim for real property taxes was time-barred, and arguing in the alternative that it was entitled to discovery on that point. Pet. App. 14-15, 23-24. The trial court granted summary judgment to respondent, concluding that there was no controversy over the essential facts and that further discovery was unnecessary. *Id.* at 55, 66. The court of appeals agreed that summary judgment was appropriate, reasoning that the documents accompanying the motion "did not raise any legitimate controversy of material and essential facts." *Id.* at 41. The correctness of

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return. 26 U.S.C. 6501(a); see 26 U.S.C. 6501(c) (Commissioner may assess tax at any time if taxpayer has failed to file a return). An organization that determines in good faith that it is tax-exempt and files a return to that effect under 26 U.S.C. 6033 (2006 & Supp. II 2008) starts the running of the statute of limitations on assessment. 26 U.S.C. 6501(g)(2). Section 6501 therefore places a concrete limitation on the Commissioner's authority to make assessments following the retroactive revocation of a tax exemption.

that factbound determination by the lower Puerto Rico courts does not present any question of federal law warranting this Court's review.

In the case of personal property, P.R. Laws Ann. tit. 21, § 5218 (2005), provides that respondent "shall have a term of four (4) years, from the date the [taxpayer] filed his/her tax return, to review the personal property tax return, the valuation of the properties, the tax computation made by the taxpayer, and to determine the correct tax to be paid." In this case, it was undisputed that Triple-S filed tax returns for the relevant periods in which it asserted that it was exempt from taxation. Pet. App. 41; see P.R. Laws Ann. tit. 21, § 5203 (2005). The court of appeals concluded that the statute did not apply because respondent had not "review[ed]" Triple-S's returns but had merely "demanded" payment of the taxes on the personal property reported. Pet. App. 41. It is questionable, however, that respondent can simply forgo the intermediate steps leading up to issuing a notice and demand for payment of taxes. Respondent is required by law to value a taxpayer's personal property based on information in its return, P.R. Laws Ann. tit. 21, §§ 5082, 5083 (2005), to compute the taxpayer's tax liability, *id.* § 5089, and to levy the tax, *id.* § 5076. Because respondent failed to take those steps within four years of the date that Triple-S filed its return, its demand for payment may have been barred by the statute of limitations, despite the lower courts' contrary holdings.

Any error the courts below may have committed in this regard, however, would be one of Puerto Rico law only that would not give rise to any constitutional deprivation. Cf. *Engle* v. *Isaac*, 456 U.S. 107, 121 n.21 (1982) ("We have long recognized that a 'mere error of state

law' is not a denial of due process.") (quoting *Gryger* v. *Burke*, 334 U.S. 728, 731 (1948)). Even assuming arguendo that a deprivation of the protections afforded by local statutes of limitations could under extreme circumstances effect a due process violation, cf. *Hicks* v. *Oklahoma*, 447 U.S. 343, 346 (1980) (State violated Due Process Clause by denying criminal defendant "the jury sentence to which he was entitled under state law"), petitioners do not contend that any breach of that character occurred in this case. Petitioners do not discuss the Puerto Rico statutes of limitations at all, let alone contend that the courts below misapplied those statutes in so extreme a manner as to violate the Constitution. Petitioners' objection to the temporal reach of the revocation therefore raises no issue warranting this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NEAL KUMAR KATYAL
Acting Solicitor General
JOHN A. DICICCO
Acting Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ERIC D. MILLER
Assistant to the Solicitor General
TERESA E. MCLAUGHLIN
ANDREW M. WEINER
Attorneys

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No. 09-233

IN THE

Supreme Court of the United States

TRIPLE-S MANAGEMENT CORP.; TRIPLE-S SALUD, INC.,
Petitioner,

v.

MUNICIPAL REVENUE COLLECTION CENTER (CRIM),
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Puerto Rico

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* COUNCIL ON STATE TAXATION IN SUPPORT OF PETITIONER

TODD A. LARD
Counsel of Record
DOUGLAS L. LINDHOLM
FREDERICK J. NICELY
BOBBY L. BURGNER
J. HUGH MCKINNON
KEITH LANDRY
COUNCIL ON STATE TAXATION
122 C St. N.W., Suite 330
Washington, D.C. 20001
(202) 484-5215

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Puerto Rico

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* COUNCIL ON STATE TAXATION

The Council On State Taxation ("COST") respectfully requests leave to file a Brief as *Amicus Curiae* in support of Petitioners. The interest of COST as *amicus curiae* is described *infra* at Brief, pp. 1. Counsel for Petitioners has consented to COST's filing of an *amicus* brief. However, Counsel for Respondents has not responded to multiple attempts to obtain written consent to the filing of such a brief. There are two distinct reasons why COST should be allowed to file as an *amicus* in this case.

First, with respect to the Petition filed in this case, COST makes additional observations concerning the constitutional implications of the retroactive application of the tax. A full exposition of the constitutional controversies stemming from this case by all interested and eligible *amicus* is ultimately to the benefit of the Court in its administration of writs for certiorari.

Second, COST members have a compelling interest in the Due Process issues presented by this case. COST and its members are uniquely familiar with the potential effect of retroactive state taxes beyond the borders of Puerto Rico.

Respectfully submitted,

TODD A. LARD
Counsel of Record
DOUGLAS L. LINDHOLM
FREDERICK J. NICELY
BOBBY L. BURGNER
J. HUGH MCKINNON
KEITH LANDRY
COUNCIL ON STATE TAXATION
122 C St. N.W., Suite 330
Washington, D.C. 20001
(202) 484-5215

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INTEREST OF *AMICUS CURIAE*

This brief *amicus curiae* in support of Petitioner is filed on behalf of the Council On State Taxation ("COST").[1] COST is a non-profit trade association formed in 1969 to promote equitable and nondiscriminatory state and local taxation of multi-jurisdictional business entities. COST represents nearly 600 of the largest multistate businesses in the United States; companies from every industry doing business in every state.

The retroactive imposition of tax is one of the most oppressive tax realities facing taxpayers today. For a government to ask taxpayers to voluntarily comply with a set of rules, and then change the rules long after the tax period is closed, flies in the face of common sense, good government, and most importantly, the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This case involves a change in the interpretation of a law that was applied to tax periods for fifteen years. A retroactive change to tax liability of this magnitude seriously threatens the certainty and finality that underlies an effectively functioning tax system. While this Court has held that it may be necessary for laws to be applied retroactively in very limited circumstances, a fifteen-year retroactive period should violate Due Process under any circumstance.

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae* has made a monetary contribution to the preparation or submission of this brief. The parties received timely notice of *amicus's* intent to file this brief. Petitioner has consented to the filing of this brief and their letter has been filed with the Clerk of this Court. Respondent has not responded to attempts to obtain consent.

During the past decade, some states have attempted, and in most cases succeeded, in subjecting taxpayers to retroactive tax, whether promulgated by statute, regulation, or some other administrative action. While rarely reviewed, many of the retroactive laws and interpretations that do end up in court have been upheld as a result of the misapplication of this Court's precedent. The tendency of state courts to rubberstamp possibly unconstitutional retroactive tax legislation not only affects the taxpayers subject to the retroactive provision at issue, but also creates a bad example for other states to follow. Further, frequent retroactive application of new tax laws creates suspicion among taxpayers and reduces respect for the tax system. The failure of state courts to apply the proper Due Process standard to retroactive tax legislation validates and perpetuates the enactment of retroactive tax legislation by states throughout the country.

Most COST members have been subject to the application of some type of retroactive tax in the conduct of their trade or business. COST members routinely challenge retroactive tax imposition, but find a severe lack of consistency in state court decisions based on state courts' varied interpretations of the Due Process Clause. This lack of consistency creates extreme uncertainty for the business community where taxpayers crave finality as to their expected and actual state tax liabilities. Given these considerations, COST members have a substantial interest in maintaining a uniform and functional standard under which to analyze retroactive tax legislation imposed by state legislatures or taxing authorities. The current state tax regimes, as evidenced by this case, are not serving this interest. COST members both individually and collectively

disadvantaged by the inconsistent and impermissible application of retroactive taxation.

STATEMENT OF THE CASE

Triple-S is a low cost medical and hospital insurance provider, organized in 1959 as a for profit corporation. In 1976, shortly after its formation, the Puerto Rican Department of Treasury (hereinafter Treasury) granted Triple-S an income tax exemption which was later expanded to cover both real and personal property. In order to ensure their tax exempt status, Triple-S operated as a non-profit entity and routinely complied with numerous requirements laid out by Treasury. For nearly 30 years Triple-S complied with the requirements, operated as a non-profit entity, and the Treasury assured it of its tax exempt status, as expressly provided in six different administrative letter rulings issued by both the Treasury, and its predecessor for collecting real and personal income taxes, the Municipal Revenue Collection Center (hereinafter CRIM). The CRIM issued the last letter ruling affirming Triple-S' tax exemption status in 1998

In 2003, the Treasury changed its policy to only allow those entities actually organized as a non-profit, and not just operating as one, tax exemption status. The Treasury notified Triple-S of the new policy's prospective application. Shortly thereafter in 2006, the CRIM decided to retroactively apply their new policy and revoke Triple-S' tax exemption status going as far back as 1991, the year the CRIM was created. The CRIM asserted that because their prior policy had been "erroneous," Triple-S had no right to tax-exempt status, despite their reliance on six administrative letter rulings over the course of nearly 30 years confirming that status.

SUMMARY OF ARGUMENT

This Court should grant certiorari and review this case for two compelling reasons. First, the court below incorrectly applied the Due Process Clause standard to the retroactive tax, resulting in a clearly erroneous decision that runs afoul of any of the standards established by this Court. The decision below offends even the narrowest reading of the Due Process Clause. Second, the decision below illustrates but one example of how taxing jurisdictions continue to impose retroactive taxes either judicially or administratively. The business community throughout the nation is significantly concerned about the continued inconsistent and frequently incorrect application by state courts of the Due Process Clause standard to challenges brought against retroactive taxes.

ARGUMENT

I. THE COURT BELOW INCORRECTLY CONCLUDED THAT THE RETROACTIVE APPLICATION OF TAX TO THE TAXPAYER WAS CONSTITUTIONAL.

The Fourteenth Amendment of the U.S. Constitution grants substantive protection against deprivation of life, liberty, or property without due process of law. This Court in *Welch v. Henry*, 305 U.S. 134 (1938), set the standard for determining whether the retroactive imposition of tax infringes upon due process. According to the Court, it is "necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation." *Id.* at 147. More recently, this Court has also factored

notice into the determination of whether the retroactive application of tax laws violates due process. *United States v. Hemme*, 476 U.S. 558 (1986). In *Hemme*, this Court identified one of the relevant circumstances to be "whether, without notice, a statute gives a different and more oppressive legal effect to conduct undertaken before enactment of the statute." The Court in *Carlton* also determined that lack of notice, although not dispositive, is clearly relevant to the due process analysis. *United States v. Carlton*, 512 U.S. 26 (1994).

The CRIM's retroactive assessment of the taxpayer raises serious constitutional concerns under the standards set out in *Welch, Hemme* and *Carlton*. While the present case does not involve the legislation at issue in *Welch, Hemme*, and *Carlton*, it does present an even more egregious retroactive tax imposition than the legislation that was challenged in those cases.

In *Carlton* which is the most recent and influential Supreme Court case dealing with this issue, the Court articulated a two-part test to determine if retroactive tax legislation violates Due Process. First, the Court looked at whether the purpose of adopting the law was illegitimate, arbitrary, or based on an improper motive, such as targeting a taxpayer after deliberately inducing them to engage in a transaction. Second, the Court looked at whether the period of retroactivity was modest. These tests, when applied to the CRIM's action in the present case, support the conclusion that the CRIM's retroactive imposition of tax violates Due Process.

The first prong of the two-part *Carlton* test is not satisfied; the CRIM's letter to the taxpayer expressly encouraged the taxpayer to rely on that guidance in

organizing and conducting their business operations in Puerto Rico. Based on that guidance and assurance, the taxpayer organized their business operations accordingly. The taxpayer was further led to believe that the CRIM's guidance had the force of law and was binding until expressly revoked. After encouraging the taxpayer to rely on the CRIM's published guidance to structure their business operations, the CRIM now seeks to impose a retroactive assessment. The CRIM's retroactive imposition of tax is undoubtedly the type of improper motive *Carlton* was intended to prevent—specifically targeting taxpayers after inducing them to engage in business.

The second prong of the two-part *Carlton* test is also not satisfied; the period of retroactive imposition was not modest. While the *Carlton* court did not establish a bright line rule for determining what is considered a modest period of retroactivity, Justice O'Connor in her concurring opinion declared that "[A] period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise, in my view, serious constitutional questions." *Carlton*, 512 U.S. at 38 (O'Connor, J., concurring). Regardless of what might be the appropriate period over which a state can retroactively impose a tax, the 15-year period at issue here is assured to offend any standard.

While the retroactive application of tax here involves an expansive period of 15 years, the court's ruling below allows for the retroactive application of tax over even greater periods. For example, taxpayers often conclude, relying on written guidance published by an adjudicatory body, such as that relied on by Triple-S, that they did not need to file tax

returns for certain prior years. Because taxpayers fail to file certain returns, relying on written guidance at the time dictating that they did not need to, the statute of limitations will never begin to run in the event that the administrator later withdraws the written guidance retroactively and seeks an adjustment. This leaves taxpayers in the precarious position of being liable for taxes due as far back as when they started doing business in the jurisdiction.

The unbridled retroactivity by the CRIM, while not accomplished by legislation, should not be tolerated simply because it is accomplished by executive fiat. An outrageous period of legislative retroactivity that cannot be tolerated under *Carlton*, should not be tolerated when imposed by a tax administrator. The same notions of fundamental fairness are involved whether the retroactive imposition of law occurs by acts of the legislature or by affirmative interpretations of an executive agency. Legislative decision-making is subject to public scrutiny and debate, but a tax administrator's retroactive application is often based solely on judgment. The Constitution does not accede a person's due process rights to violation by a specific branch of government—due process is absolute. Fundamental fairness should be as protected from encroachment by agency action as it is from legislative action—both have the force and effect of law.

Regardless of how the *Carlton* line of cases fit within this analysis, the CRIM should be precluded on principals of fundamental fairness and manifest injustice from retroactively assessing tax liabilities. It is critical to the fair and efficient administration of every state's tax laws to ensure that when an administrative agency issues policy directives that require

compliance upon pain of penalty and interest, taxpayers who rely on such pronouncements in good faith are not later punished for the government's error. Taxpayers that justifiably rely on promises made by their government should not do so at their peril. No less than the credibility of, and trust in, our government is at stake. This concept of trust in government is fundamental and has been emphasized by this Court on numerous occasions. *See generally St. Regis Paper Co. v. United States*, 368 U.S. 208, 209 (1961) (Black, J., dissenting) ("Our Government should not by picayunish haggling over the scope of its promise, permit one of its arms to do that which, by any fair construction, the Government has given its word that no arm will do. It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government."); *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 383, 387-88 (1947) (Jackson, J., dissenting) ("It is very well to say that those who deal with the Government should turn square corners. But there is no reason why the square corners should constitute a one-way street").

This fundamental principle that those who justifiably rely on promises made by their government can do so safely, reflects the strong belief of the Framers of the Constitution. The taxpayer was reasonably justified in relying on the exemption letters. After all, the administrator gave Triple-S written assurances that they could, and should, so rely. The CRIM would ask this Court to declare that persons should not, and cannot, rely on assurances made by their government, for if they do, they proceed at their own peril. This is not good government; and this is certainly not due process of law.

II. THE BUSINESS COMMUNITY IS CONCERNED ABOUT THE INCONSISTENT AND INCORRECT APPLICATION BY STATE COURTS OF THE DUE PROCESS CLAUSE STANDARD FOR CHALLENGING RETROACTIVE TAX.

Unfortunately, the acts of the CRIM, while on the extreme edge in terms of length of retroactivity, are certainly not unique.[2] Taxpayers are relentlessly forced to retroactively comply with tax laws. Further guidance by the Court as to the proper scope of retroactivity would provide much needed assistance to state courts addressing this issue. Taxpayers and tax administrators routinely struggle with retroactive application.

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[2] While the length of the retroactivity in this case is on the extreme edge, states imposing more modest retroactive taxation of multistate taxpayers that arguably infringes on their Due Process rights can have a more significant impact on taxpayers by exposing them to the possibility of double taxation. In the multistate context, taxpayers often must rely on a state tax administrator's guidance as to whether certain items of income should be reported in their state or another. Assuming a taxpayer relies on that advice and does not include an item in income in that state, the taxpayer will likely have included it in income in another state. If that guidance is later retroactively withdrawn and taxpayers are subjected to tax in that state, they will thus have been subjected to double taxation. This problem is amplified for taxpayers if the statute of limitations in the state they originally paid tax to has closed. In that case they cannot pursue a refund and will be unable to alleviate the double taxation. Through this process, it is clear that tax administrators can inflict more harm on taxpayers than just that of retroactive taxation in their own state—they can potentially subject taxpayers to double taxation for which they very well might have no remedy.

For example, in *Maryland v. CBS, Inc.*, No. 88364053 (Md. Cir. Ct. 1989), *rev'd*, 575 A.2d 324 (Md. 1990), the Maryland Circuit Court found that retroactive decisions in the tax context were usually only an abuse of discretion where the court finds the taxpayer justifiably relied to their severe detriment on the prior status of the law. In that case, CBS, who was challenging a change to its sales factor, could not show justifiable reliance because the change in law would not have resulted in CBS changing its behavior in any way.

In contrast to the CRIM's retroactive application of a change in their policy, in *Praxair Tech., Inc. v. Division of Taxation*, 961 A.2d 738 (N.J. Super. Ct. App. Div. 2008), *certification granted*, 970 A.2d 1047 (N.J. Apr. 02, 2009), the Superior Court of New Jersey, Appellate Division reversed the lower court and held it would not retroactively apply a current interpretation of the law based on the fact that the statute had been amended and a new example added to the regulations. The court explained the amendments clarified the scope of the statute, and the Court would not apply the current interpretation of the law under the amendments to years occurring prior to the amendment.

In *U.S. Bancorp v. Dep't of Revenue*, 103 P.3d 85 (Or. 2004), the Oregon Supreme Court upheld the Oregon Department of Revenue's application of a regulation issued in 1995, to tax years starting in 1988. As applied, the regulation had an eight-year retroactivity period and was used by the Department of Revenue to assess almost $10,000,000 in new taxes and interest against U.S. Bancorp by including an additional factor—intangible property—in the taxpayer's income apportionment formula for all tax

years that remained open for audit. Because U.S. Bancorp had extended its federal statute of limitations to allow the Internal Revenue Service to conclude its audit process, U.S. Bancorp's tax returns remained open to audit as far back as 1988, well beyond the standard three-year statute of limitations that applied to other Oregon taxpayers.

In *Rivers v. State*, 490 S.E.2d 261 (S.C. 1997), the South Carolina Supreme Court invalidated the retroactive application of tax legislation to tax years two to three years before the legislation was enacted. In reaching its decision, the court cited *Carlton* for the proposition that tax legislation with a period of retroactivity greater than one year is constitutionally suspect.

The conflicting state supreme court decisions evidence the strong need for this Court's intervention to dictate a clear and precise standard and prevent the continued development of inconsistent case law. Given the increasing frequency of state enactment of retroactive tax legislation, the United States Supreme Court should seize this opportunity to provide unambiguous guidance on the proper constitutional standard for testing the constitutionality of retroactive tax legislation.

CONCLUSION

For the reasons stated above, COST respectfully requests the United States Supreme Court to accept this case for review.

Respectfully submitted.

TODD A. LARD
Counsel of Record
DOUGLAS L. LINDHOLM
FREDERICK J. NICELY
BOBBY L. BURGNER
J. HUGH MCKINNON
KEITH LANDRY
COUNCIL ON STATE TAXATION
122 C St. N.W., Suite 330
Washington, D.C. 20001
(202) 484-5215